NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

PREAMBLE

1. Sections Affected	Rulemaking Action
Article 9	New Article
R9-8-901	New Section
R9-8-902	New Section
R9-8-903	New Section
R9-8-904	New Section
R9-8-905	New Section
R9-8-906	New Section
R9-8-907	New Section
R9-8-908	New Section
R9-8-909	New Section
R9-8-910	New Section
R9-8-911	New Section
R9-8-912	New Section
R9-8-913	New Section
R9-8-914	New Section
R9-8-915	New Section
R9-8-916	New Section
Exhibit A	New Exhibit
Exhibit B	New Exhibit
Exhibit C	New Exhibit
Exhibit D	New Exhibit
Exhibit E	New Exhibit
Exhibit F	New Exhibit
Article 16	Repeal
R9-8-1611	Repeal
R9-8-1612	Repeal
R9-8-1614	Repeal
R9-8-1615	Repeal
R9-8-1616	Repeal
R9-8-1617	Repeal
R9-8-1618	Repeal
R9-8-1619	Repeal
R9-8-1620	Repeal
R9-8-1621	Repeal
R9-8-1622	Repeal
R9-8-1624	Repeal
R9-8-1625	Repeal
R9-8-1626	Repeal
R9-8-1627	Repeal
R9-8-1628	Repeal
R9-8-1629	Repeal
R9-8-1630	Repeal

R9-8-1631	Repeal
R9-8-1632	Repeal
R9-8-1633	Repeal
R9-8-1634	Repeal
R9-8-1635	Repeal
R9-8-1636	Repeal
R9-8-1637	Repeal
R9-8-1638	Repeal
R9-8-1639	Repeal
R9-8-1640	Repeal
R9-8-1641	Repeal
R9-8-1642	Repeal
R9-8-1643	Repeal
R9-8-1644	Repeal
R9-8-1645	Repeal
R9-8-1646	Repeal
R9-8-1647	Repeal
R9-8-1648	Repeal
R9-8-1649	Repeal

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)

   Implementing statutes: A.R.S. §§ 36-104(1)(b)(i), and 36-796.01 through 36-796.05

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Richard Cox, Rules Specialist

   Address: Arizona Department of Health Services
   Food Safety and Environmental Services
   3815 North Black Canyon Highway
   Phoenix, Arizona 85015

   Telephone: (602) 230-5908

   Fax Number: (602) 230-5817

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   The rules proposed for 9 A.A.C. 8, Article 9, entitled "Bedding", contain provisions that require:

   1. The licensing of persons who manufacture, renovate, or sell bedding in Arizona pursuant to A.R.S. §§ 36-796 through 36-796.08;
   2. A label with a description of the product on bedding sold in Arizona;
   3. That materials used in new bedding are sanitary, meet industry standards, and are honestly presented; and
   4. That used bedding sold in Arizona is clean and free of dirt and bacteria.

   The current rules, contained in 9 A.A.C. 8, Article 16, entitled "Bedding Regulations", were adopted in 1976, have undergone no revision since, and are obsolete. The proposed rules place only slightly different procedural requirements on bedding manufacturers and retailers and consist mostly of stylistic and grammatical changes in order to comply with current rulemaking requirements.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   A. Persons who are directly affected, bear costs, or benefit:

      1. Owners of bedding renovation factories;
      2. Owners of bedding manufacturing factories;
      3. Arizona Department of Health Services: Responsible for administration and enforcement of bedding requirements and inspection, and seizure of substandard bedding;
      4. The public benefits from honestly presented bedding products.

   B. Cost/benefit analysis:

      1. Arizona Department of Health Services: None. There will be no increase in inspection or enforcement responsibilities. Therefore the Department will not be impacted by the proposed rules.

2. Political Subdivisions: None. Political subdivisions are not authorized or mandated to conduct bedding inspections or initiate bedding enforcement actions.
3. Small business: Minimal. For-profit producers of bedding products are required to comply with the proposed bedding labeling requirements, including the cost of designing and printing bedding product labels.
4. Consumers and public: Consumers and public will have sanitary bedding products that are honestly presented.
5. State revenues: None.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Richard Cox, Rules Specialist

Address: Arizona Department of Health Services
Food Safety and Environmental Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015

Telephone: (602) 230-5908

Fax Number: (602) 230-5817

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department has scheduled the following oral proceedings:

Date: September 29, 1997

Time: 10 a.m.

Location: 400 North Building, Room 158
416 West Congress
Tucson, Arizona 85701

Nature: Oral Proceeding

Date: September 30, 1997

Time: 1 p.m.

Location: 1700 West Washington
1st Floor Conference Room
Phoenix, Arizona 85007

Nature: Oral Proceeding

Date: October 3, 1997

Time: 11 a.m.

Location: Coconino County Health Department
Ponderosa Room
2625 North King Street
Flagstaff, Arizona 86001

Nature: Oral Proceeding

A person may submit written comments on the proposed rules, or request an oral proceeding, no later than 5 p.m., October 3, 1997, to the following person:

Name: Richard Cox, Rules Specialist

Address: Arizona Department of Health Services
Food Safety and Environmental Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015

Telephone: (602) 230-5908

Fax Number: (602) 230-5817

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

10. Incorporations by reference and their location in the rules:

R9-8-908(A): "International Sleep Products Association Tagging Law Manual", 1996 Edition, pages 17 through 27, published by the International Sleep Products Association, 333 Commerce Street, Alexandria, Virginia 22314.

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION

ARTICLE 9. BEDDING

Section

R9-8-901. Definitions
R9-8-902. License Application
R9-8-903. Issuance of License
R9-8-904. License Classification
R9-8-905. License Suspension or Revocation
R9-8-906. Off-Sale Procedure
R9-8-907. Off-Sale Label Requirements
R9-8-908. Uniform Classification and Description of Filling Materials
R9-8-909. Prohibited Filling Materials
R9-8-910. General Requirements for a Bedding Label
R9-8-911. Label and Labeling Required on New Bedding
R9-8-912. Labels and Labeling Required on Renovated Bedding
R9-8-913. Labels and Labeling Required on Secondhand Bedding
R9-8-914. Treatment of Secondhand Bedding
R9-8-915. Treatment Record
R9-8-916. Recommended Treatment Methods
Exhibit A Off-sale Label
Exhibit B White Label
Exhibit C Red Label
Exhibit D Green Label
Exhibit E Yellow Label for Disinfected Bedding
Exhibit F Yellow Label for Sterilized Bedding

ARTICLE 16. ~~BEDDING REGULATIONS~~ REPEALED

Section

R9-8-1611. ~~Scope~~ Repealed
R9-8-1612. ~~Legal authority~~ Repealed
R9-8-1614. ~~Definitions~~ Repealed
R9-8-1615. ~~Exceptions~~ Repealed
R9-8-1616. ~~Licenses for manufacture and renovation of bedding~~ Repealed
R9-8-1617. ~~"Off-Sale" tags~~ Repealed
R9-8-1618. ~~Labeling requirements~~ Repealed
R9-8-1619. ~~Official law label requirements~~ Repealed
R9-8-1620. ~~Universal filling material requirements~~ Repealed
R9-8-1621. ~~Oil and grease limitations~~ Repealed
R9-8-1622. ~~Sludge limitation~~ Repealed
R9-8-1624. ~~Universal definitions and labeling requirements~~ Repealed
R9-8-1625. ~~Optional labeling for cotton filling material~~ Repealed
R9-8-1626. ~~Definitions of types of cotton~~ Repealed
R9-8-1627. ~~Labeling requirements -- definitions~~ Repealed
R9-8-1628. ~~Down Products~~ Repealed
R9-8-1629. ~~Tolerances~~ Repealed
R9-8-1630. ~~Wool and hair regulations~~ Repealed
R9-8-1631. ~~Man-made fiber regulations~~ Repealed
R9-8-1632. ~~Miscellaneous vegetable fiber regulations~~ Repealed
R9-8-1633. ~~Treatment and cleaning of secondhand bedding~~ Repealed
R9-8-1634. ~~Licenses to apply sterilization, disinfection, or disinfestation treatment~~ Repealed
R9-8-1635. ~~Tests and inspections of treatment equipment~~ Repealed
R9-8-1636. ~~Treatment chamber identification; numbering of lot~~ Repealed
R9-8-1637. ~~Charts~~ Repealed
R9-8-1638. ~~Records~~ Repealed
R9-8-1639. ~~Storage of formaldehyde~~ Repealed
R9-8-1640. ~~Filling materials~~ Repealed
R9-8-1641. ~~Vacuum chemical method~~ Repealed
R9-8-1642. ~~Dry heat method~~ Repealed
R9-8-1643. ~~Feather and down method~~ Repealed
R9-8-1644. ~~Wet method~~ Repealed
R9-8-1645. ~~Steam under pressure method~~ Repealed
R9-8-1646. ~~Disinfecting~~ Repealed
R9-8-1647. ~~Treatment and sterilization tags~~ Repealed
R9-8-1648. ~~Molded latex foam rubber regulations~~ Repealed
R9-8-1649. ~~Violations~~ Repealed

ARTICLE 9. BEDDING

R9-8-901. Definitions

In addition to the definitions contained in A.R.S. § 36-796, in this Article, unless otherwise specified:

1. "Article" means a piece of bedding or an upholstered furniture unit, including its cushions and pillows.
2. "Bedding establishment" means a store or factory where bedding is manufactured, renovated, treated, or sold.
3. "Disinfect" means to kill disease-causing bacteria and viruses on bedding using chemical means.
4. "Label" means a card, flap, or strip attached to bedding.
5. "Labeling" means the handwritten, printed, and graphic information displayed on a bedding label pursuant to A.R.S. § 36-796.02 and the rules contained in this Article.
6. "License" means authorization by the Department to manufacture, renovate, treat, or sell bedding.
7. "Lot" means a group of articles sterilized together during a single process.
8. "Manufacture" means to make bedding using new or secondhand material or a mixture of both new and secondhand material.
9. "Sterilize" means to kill all bacteria, viruses, and insects on or in bedding by using either chemical or physical means.
10. "Treat" means to clean, disinfect, clean and disinfect, or sterilize bedding.

R9-8-902. License Application

A. The Department shall use the following time-frames for a bedding license application:
   1. An administrative review period of 30 days, and
   2. A substantive review period of 30 days.

B. The overall licensing time-frame for a bedding license is 60 days. For the purposes of this subsection, Saturdays, Sundays, and legal holidays shall be included in the time-frame compu-

tation. The last day of the notice period shall be included in the computation unless it is a Saturday, Sunday, or legal holiday.

C. A license applicant shall use a license application form and instructions supplied by the Department. A completed application form shall contain the following information:
1. Full names and home mailing addresses of individuals with an ownership interest in the bedding establishment, or full names and home mailing addresses of the officers if the applicant is a corporation;
2. Name of the bedding establishment;
3. Street address for the bedding establishment;
4. Telephone number for the bedding establishment;
5. Classification of bedding license requested;
6. License numbers of any bedding licenses held in Arizona or any other state by the applicant;
7. Description of any bedding treatment method the applicant plans to use; and
8. Signature of the individual completing the application and the signature date.

D. A person with a bedding establishment at multiple locations shall submit a completed license application for each location.

E. The Department shall, within 30 days of receipt of the application required in subsection (A), mail to the applicant by 1st class mail a notice of administrative completeness or a statement that lists the missing information required to process the application.

R9-8-903. Issuance of License

A. The Department shall, within 30 days from the date of receipt of the items required in R9-8-902(A), mail to the applicant by 1st class mail:
1. A bedding license; or
2. If a bedding license is denied, a written explanation in compliance with A.R.S. § 41-1076.

B. A bedding license issued by the Department shall bear the following information:
1. Name of the bedding establishment,
2. Street address of the bedding establishment,
3. Name of the licensee,
4. Mailing address of the licensee,
5. License classification,
6. Unique identifying number, as determined by the Department.

C. A license issued by the Department is nontransferable.

D. Upon request, the Department may issue a license with the same license number issued to an applicant by a different state, provided that the number is not already in use in Arizona.

R9-8-904. License Classification

The Department shall issue 3 types of bedding licenses:
1. Type "D" authorizing a person to sell, or offer for sale, bedding at a retail outlet;
2. Type "M" authorizing a person to manufacture bedding from all new material, for either wholesale or retail sale; and
3. Type "R" authorizing a person to manufacture, renovate, or treat bedding that contains, in whole or in part, secondhand material, for wholesale or retail sale.

R9-8-905. License Suspension or Revocation

A. The Department may suspend or revoke a bedding license if the Department determines that the licensee has:
1. Violated the rules of this Article or the provisions of A.R.S. Title 36, Chapter 6, Article 11; or
2. Provided false information on a license application.

B. The Department shall serve notice of a pending suspension or revocation action to a licensee in accordance with A.R.S. § 41-1092.04.

C. A license revocation or suspension hearing shall be conducted by the Office of Administrative Hearings pursuant to A.R.S. Title 41, Chapter 6, Article 10.

R9-8-906. Off-Sale Procedure

A. The Department shall issue an off-sale order suspending the sale or potential sale of bedding that violates the rules of this Article or the provisions of A.R.S. Title 36, Chapter 6, Article 11.

B. An off-sale order shall contain the following information:
1. Date of issue,
2. Name of the bedding establishment,
3. Street address of the bedding establishment,
4. Name of the licensee,
5. Mailing address of the licensee,
6. License number of the licensee,
7. Specific reason for the off-sale order, and
8. Identifying number of any off-sale label attached to bedding pursuant to subsection (C).

C. Pursuant to A.R.S. § 36-796.01(E), a Department representative shall use a rubber, plastic, or metal cord to attach an off-sale label to an article of bedding.

D. An off-sale label shall not be defaced, altered, or concealed from view.

E. An off-sale label shall be removed from bedding only as provided in subsection (F).

F. An article of bedding ordered off-sale shall not be sold or offered for sale until:
1. A Department representative issues a Release for Sale order and removes the off-sale label, or
2. The Department sends a Release for Sale order, by certified mail, instructing the licensee or bedding owner to remove the off-sale label.

R9-8-907. Off-Sale Label Requirements

A. The Department shall prepare an off-sale label in accordance with this Section.

B. An off-sale label shall be no less than 12 square inches in size.

C. The labeling on an off-sale label shall comply with the general requirements contained in R9-8-910(C)(1) through (6).

D. An off-sale label shall bear the following specific labeling:
1. A unique identifying number, as determined by the Department;
2. The statement "THIS ARTICLE SHALL NOT BE SOLD BECAUSE IT DOES NOT COMPLY WITH THE BEDDING ACT OF THE STATE OF ARIZONA. THIS LABEL SHALL BE REMOVED ONLY BY AN INSPECTOR FROM THE ARIZONA DEPARTMENT OF HEALTH SERVICES OR AS PROVIDED IN A.A.C. R9-8-906(F).";
3. Description of the bedding article;
4. Signature of the Department representative; and
5. Date that the off-sale label is signed.

E. An off-sale label shall resemble Exhibit A.

R9-8-908. Uniform Classification and Description of Filling Materials

A. A filling material shall be described by using the terms, words, and phrases officially adopted by the Association of Bedding and Furniture Law Officials in the "International Sleep Products Association Tagging Law Manual" (1996 Edition), pages 17 through 27, published by the International Sleep Products Association, 333 Commerce Street, Alexandria, VA, 22314, which is incorporated by reference. Copies of the "Interna-

tional Sleep Products Association Tagging Law Manual" are available for viewing at the Secretary of State's Office, Public Services Division, 1700 W. Washington, Phoenix, AZ 85007, and the Department of Health Services, 1740 W. Adams, Phoenix, AZ 85007. This incorporation by reference includes no future editions or amendments.

B. Substitute filling material descriptions or terms are forbidden.

R9-8-909. Prohibited Filling Materials

A. A filling material obtained from a landfill, junkyard, or hospital is prohibited.

B. No person shall sell filling material containing any of the following:
1. Animal or insect excrement;
2. Animal skin;
3. Decayed animal or plant matter;
4. Dirt;
5. Insects;
6. Plant leaves;
7. Plant stems;
8. Trash; or
9. More than 5% by weight of oil, grease, fat, or a combination thereof.

R9-8-910. General Requirements for a Bedding Label

A. An Arizona license number issued pursuant to R9-8-903(A) shall appear on the label of a bedding article manufactured, renovated, or treated within the state.

B. A person holding a type "D" license shall ensure that a label is attached to each article of bedding that the licensee sells or offers for sale, and that the label and its labeling conforms with the requirements of this Article and A.R.S. § 36-796.02.

C. A person licensed pursuant to this Article shall ensure that a label is attached to each article of bedding that the licensee manufactures, sells, holds for sale, renovates, or treats. A bedding label required pursuant to this Article shall conform with the following general requirements:
1. Labeling shall be imprinted on only 1 side of the label;
2. Labeling shall be no less than 1/16 inch high;
3. Labeling shall be in English;
4. Labeling shall be in black ink;
5. The labeling information shall not rub or flake off;
6. The label shall be made of polyolefin, plastic, vinyl, teslin, vellum cloth, or equivalent material that will not lose its labeling information when folded;
7. The statement "UNDER PENALTY OF LAW THIS LABEL SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER" shall show at the top of the label;
8. The label shall be securely fastened to a completed article of bedding at the place of treatment or manufacture; and
9. A label attached to bedding shall not be concealed or obstructed from view.

D. Imported bedding may retain the label attached by the manufacturer, if the label complies with the rules of this Article, and A.R.S. § 36-796.02.

E. A label may contain additional information, provided the additional information is not inconsistent or contrary to the requirements of A.R.S. Title 36, Chapter 6, Article 11, or the rules of this Article.

R9-8-911. Label and Labeling Required on New Bedding

A. A person holding a type "M" license shall ensure that a white label is attached to each article of bedding that the licensee manufactures, sells, or offers for sale, and that the white label and its labeling conforms with R9-8-910 and the requirements of this Section.

B. A white label shall bear the following specific labeling:
1. The statement "ALL NEW MATERIAL CONSISTING OF:" and a description of the contents in print no less than 1/8 inch high;
2. A description of the filling materials in accordance with R9-8-908;
3. The percentage, by weight, of the different filling materials present, listed by descending order of prevalence from the most to the least; and
4. The statement "CERTIFICATION IS MADE BY THE MANUFACTURER THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH LAW."

C. A white label shall be no less than 6 square inches in size.

D. A white label shall resemble Exhibit B.

R9-8-912. Labels and Labeling Required on Renovated Bedding

A. A person holding a type "R" license shall ensure that a red or green label is attached to each article of bedding covered under this Section, and that the red or green label and its labeling conforms with R9-8-910 and the requirements of this Section.

B. A red label shall be attached to an article of bedding that is manufactured in whole or in part from secondhand material.

C. A red label shall bear the following specific labeling:
1. The words "SECONDHAND MATERIAL" in letters 1/4 inch high.
2. A description of the filling materials in accordance with R9-8-908, and
3. The statement "CERTIFICATION IS MADE BY THE MANUFACTURER THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH LAW".

D. A red label shall be no less than 12 square inches in size.

E. A red label shall resemble Exhibit C.

F. A green label shall be attached to bedding renovated or repaired for the owner, for the owner's own use and from the owner's material, which is, in whole or in part, secondhand material.

G. A green label shall bear the following specific labeling:
1. The statement "NOT FOR SALE, OWNER'S OWN MATERIAL WHICH IS SECONDHAND MATERIAL" in letters no less than 1/8 inch high;
2. The statement "CERTIFICATION IS MADE THAT THIS ARTICLE WAS RECEIVED FROM THE OWNER FOR RENOVATION AND CONTAINS ONLY MATERIAL PROVIDED BY THE OWNER, PART OR ALL OF WHICH IS SECONDHAND MATERIAL CONSISTING OF:";
3. A description of the filling materials in accordance with R9-8-908;
4. The name and address of the owner of the bedding; and
5. The completion date.

H. A green label shall be no less than 6 square inches in size.

I. A green label shall resemble Exhibit D.

R9-8-913. Labels and Labeling Required on Secondhand Bedding

A. A type "R" licensee shall ensure that a yellow label is attached to each article of secondhand bedding sold or offered for sale and bedding renovated or manufactured in whole or in part from secondhand material.

B. A yellow label attached to bedding under this subsection shall be in addition to a red or green label as required under R9-8-912.

C. A yellow label and its labeling shall conform with R9-8-910 and the requirements of this Section.

D. A yellow label shall bear the following specific labeling:

1. The treatment method used,
2. The name and address of the person for whom the article was treated,
3. The date treated, and
4. A unique identifying number.

E. A yellow label shall be no less than 12 square inches in size.

F. A yellow label attached to disinfected secondhand bedding shall bear the following specific labeling:

1. The statement "CERTIFICATION IS MADE THAT THIS SECONDHAND ARTICLE HAS BEEN DISINFECTED BY A METHOD APPROVED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES"; and
2. The words "SECONDHAND", "ARTICLE", and "DISINFECTED" in letters no less than 1/4 inch high.

G. A disinfected article of secondhand bedding shall have a yellow label attached that resembles Exhibit E.

H. A yellow label attached to sterilized secondhand bedding shall bear the following specific labeling:

1. The statement "CERTIFICATION IS MADE THAT THIS SECONDHAND ARTICLE HAS BEEN STERILIZED BY A METHOD APPROVED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES"; and
2. The words "SECONDHAND", "ARTICLE", and "STERILIZED" in letters no less than 1/4 inch high.

I. A sterilized article of secondhand bedding shall have a yellow label attached that resembles Exhibit F.

R9-8-914. Treatment of Secondhand Bedding

A. Subject to A.R.S. § 36-796.07, bedding containing any secondhand material shall not be sold, or offered for sale, unless it has been cleaned and disinfected or sterilized.

B. The Department may require laboratory test data to determine the effectiveness of any treatment method that is not listed in R9-8-916.

R9-8-915. Treatment Record

A. A type "R" licensee shall create a treatment record for each article of bedding that the licensee treats. The treatment record shall contain:

1. The treatment date;
2. The name of the person for whom the bedding was treated;
3. The treatment lot and label numbers, if applicable; and
4. The name and address of the receiver if different from the source.

B. A treatment record shall be kept for a period of 1 year.

R9-8-916. Recommended Treatment Methods

The following treatment methods are approved by the Department:

1. Sterilization by steam under pressure:

   An article of bedding or filling materials sterilized by this process shall be subjected to treatment by live steam for 30 minutes at a pressure of 15 pounds per square inch and at a temperature of 250° F., or for 20 minutes at a pressure of 20 pounds per square inch and at a temperature of 260° F. The treatment chamber shall have devices to measure both pressure and temperature.

2. Sterilization by dry heat:

   Sterilization by dry heat requires a holding temperature of 230° F. for a period of 2 hours. A recording device shall automatically record the time and temperature for each lot sterilized.

3. Sterilization by boiling:

   The material to be sterilized shall be immersed in boiling water for 10 minutes with agitation of the material while in the vat.

4. Sterilization by dry cleaning:

   Bedding subjected to a commercial dry cleaning process shall be deemed sterilized.

5. Spray disinfectant:

   Disinfection may be accomplished by the application of a disinfectant registered by the United States Environmental Protection Agency for use on bedding. The product shall be applied according to the manufacturer's instructions.

6. A licensee shall submit proof of the effectiveness of an alternate treatment method to the Department for approval.

Exhibit A. Off-sale Label

OFF-SALE NO. _____

ARIZONA DEPARTMENT OF HEALTH SERVICES

THIS ARTICLE SHALL NOT BE SOLD BECAUSE IT DOES NOT COMPLY WITH THE PROVISIONS OF THE BEDDING ACT OF THE STATE OF ARIZONA. THIS LABEL SHALL BE REMOVED ONLY BY AN INSPECTOR FROM THE ARIZONA DEPARTMENT OF HEALTH SERVICES OR AS PROVIDED IN A.A.C. R9-8-906(F).

ARTICLE DESCRIPTION: _____

INSPECTOR: **DATE:**

Exhibit B. White Label

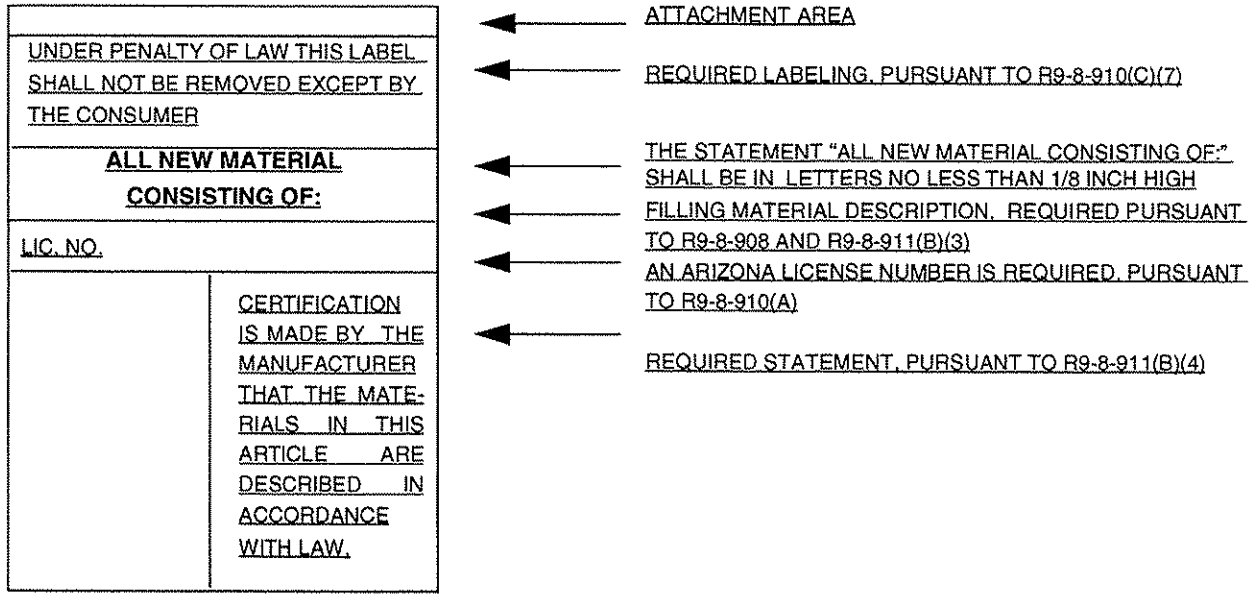


Exhibit C. Red Label

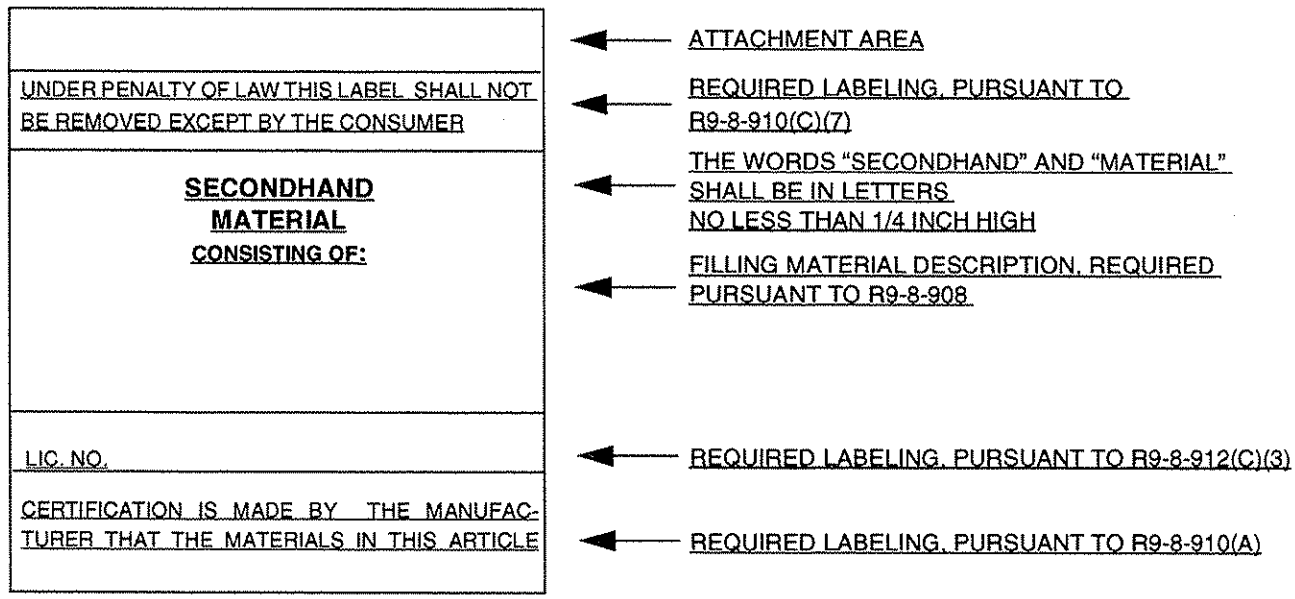


Exhibit D. Green Label

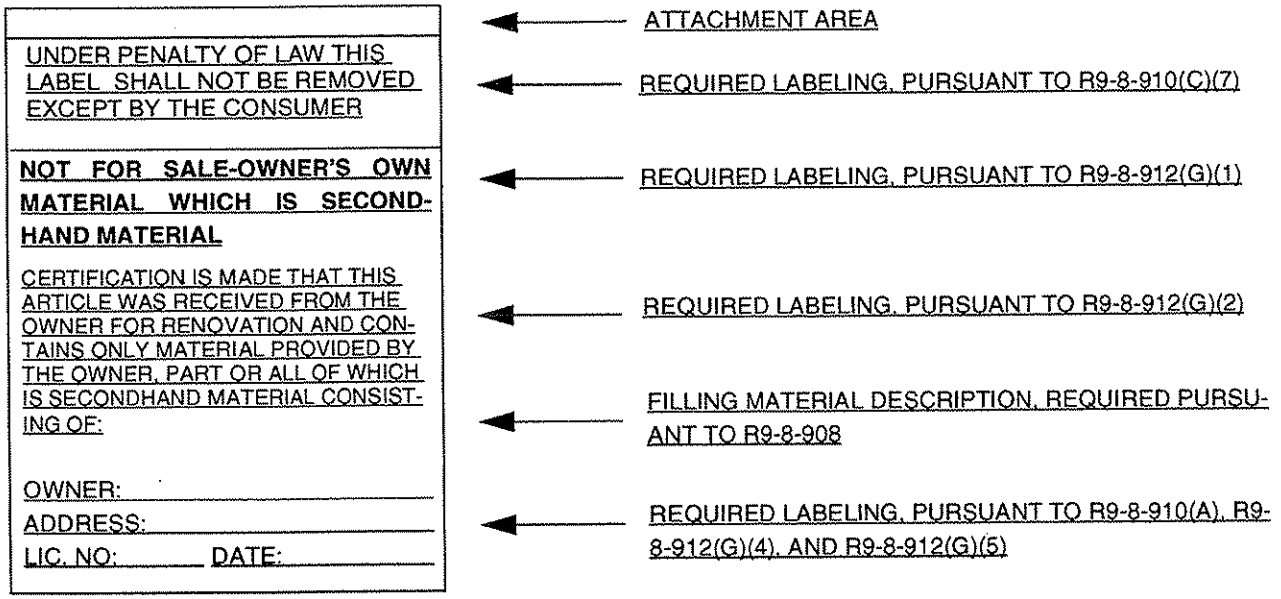


Exhibit E. Yellow Label for Disinfected Bedding

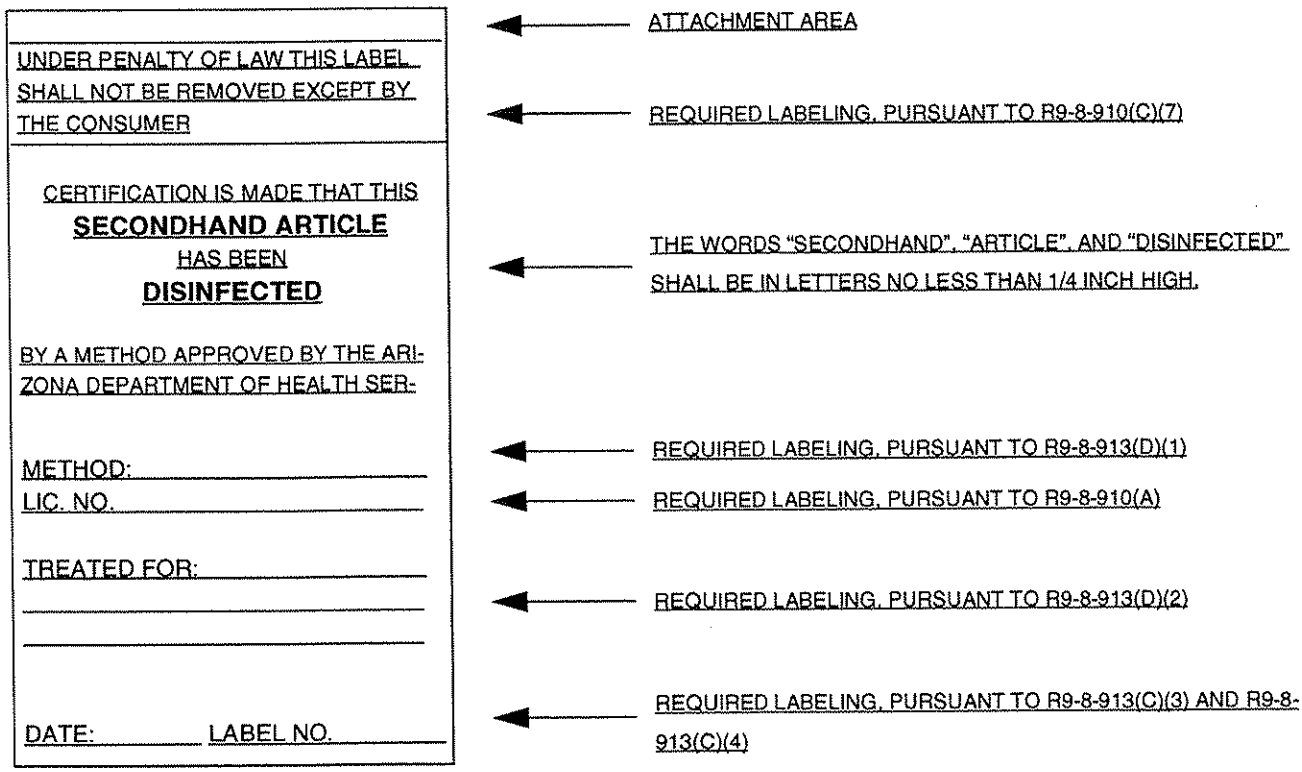
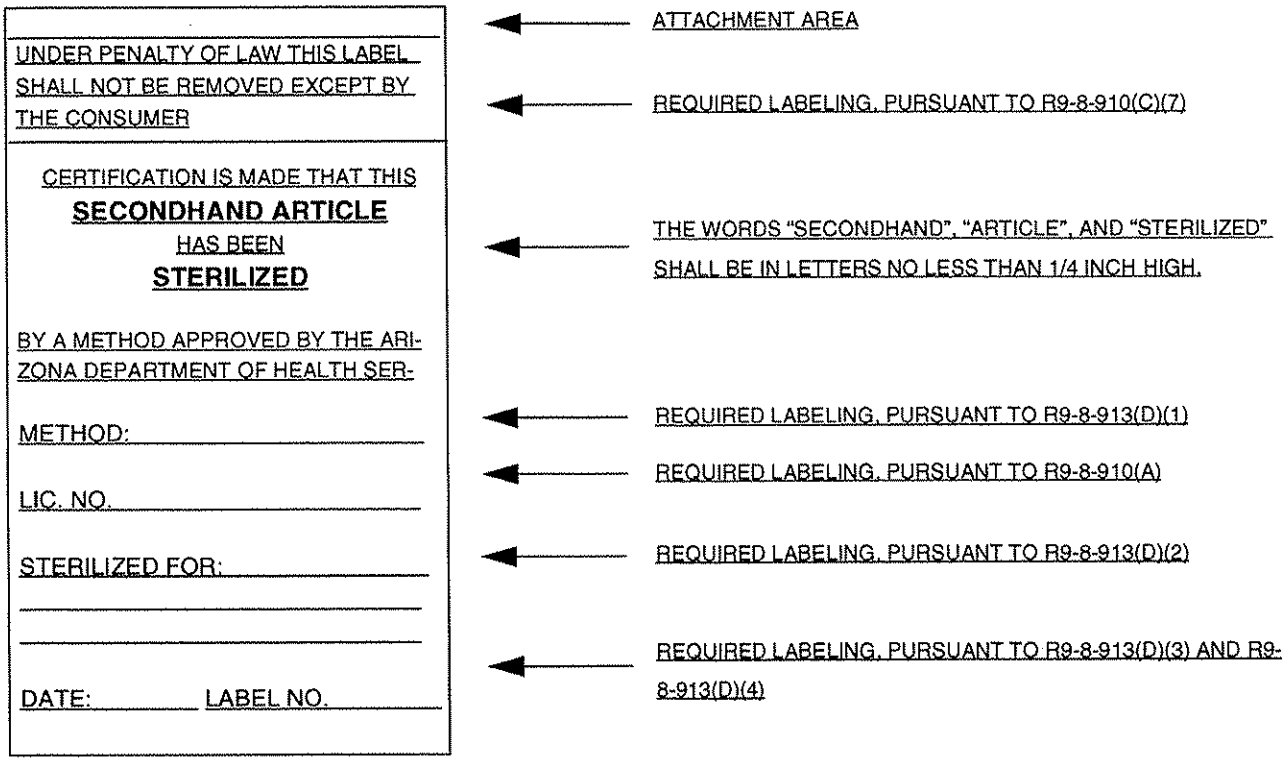


Exhibit F. Yellow Label for Sterilized Bedding



ARTICLE 16. ~~BEDDING REGULATIONS~~ REPEALED

R9-8-1611. ~~Scope~~ Repealed

~~The regulations in this Article shall apply to the manufacture, repair, or renovation, and sale of bedding within this state and to the manufacture, repair, renovation of bedding held for sale in this state regardless of the place of manufacture, repair or renovation.~~

R9-8-1612. ~~Legal authority~~ Repealed

~~The regulations in this Article are adopted pursuant to the authority granted by Title 36, Chapter 6, Article 11, A.R.S.~~

R9-8-1614. ~~Definitions~~ Repealed

~~In this Article, unless the context otherwise requires:~~

1. ~~"Bedding" includes upholstered furniture and means any mattress, box spring, upholstered chair, couch, or other upholstered device or any quilted pad, packing pad, mattress pad, hammock pad, pad, comforter, bunk quilt, sleeping bag, pillow, cushion, hassock or other bag or container made of leather, cloth, plastic, or any other material that is used as a covering or is stuffed or filled in whole or in part with concealed material in addition to the structural units, all of which may be used by any human being for sleeping, resting, or reclining purposes. "Bedding" shall not include the upholstered portions of motor vehicles other than mobile homes, house trailers, and camp trailers.~~
2. ~~"Director" means the Director of the Department of Health Services.~~
3. ~~"Department" means the Department of Health Services.~~
4. ~~"Filling materials" means all materials, prefabricated forms, articles, or portions thereof, used as filling in the manufacture, repair, or renovation of bedding and upholstered furniture.~~
5. ~~"Law label" includes any of the labels required under these regulations and the provisions of Article 11, Chapter 6, Title 36, A.R.S. to be attached to bedding manufactured, repaired or renovated.~~
6. ~~"Lot" means the entire group of articles treated in 1 treatment chamber during 1 operation.~~
7. ~~"New" means any material or article which has not been previously used for any purpose. Manufacturing processes shall not be considered a prior use.~~
8. ~~"Person" includes persons, partnerships, companies, corporations, associations, and governmental agencies.~~
9. ~~"Regulations" means rules and regulations of the Department adopted pursuant to Article 11, Chapter 6, Title 36, A.R.S.~~
10. ~~"Renovate" means to repair, make over, re-cover, restore, or renew bedding or upholstered furniture and place it in a good state of repair.~~
11. ~~"Secondhand" means any article or material or portion thereof of which prior use of any kind has been made.~~
12. ~~"Sell", or any of its variants, includes any of, or any combination of, the following: sell, offer or expose for sale, barter, trade, lend, deliver, give away, rent, consign, lease, possess with intent to sell or dispose of in any other commercial manner. The possession of any article of bedding or filling materials, as defined in this Section, by any maker, remaker or dealer, in the course of business shall be presumptive evidence of intent to sell.~~
13. ~~"Sterilizer" means a person who sterilizes, disinfects, or fumigates any article of upholstered furniture, bedding, or filling material relating thereto.~~

R9-8-1615. ~~Exceptions~~ Repealed

~~A. Secondhand bedding held for sale on July 11, 1969, and continuously thereafter shall not be subject to the requirements of~~

~~A.R.S. § 36-796.04 and the regulations in this Article regarding the treatment and sterilization of secondhand bedding. Secondhand bedding which has been sold or otherwise removed from sale since July 11, 1969, is not exempt under this subsection.~~

~~B. The regulations in this Article and the provisions of Article 11, Chapter 6, Title 36, A.R.S. shall not apply to:~~

~~1. The manufacture, repair, or renovation of bedding which occurred prior to July 11, 1969.~~

~~2. The sale of bedding under order of any court.~~

~~3. The sale of bedding by a householder of bedding owned and used by such householder and his family and which was not acquired for resale, except that the sale of any such bedding by a householder through an agent shall be within the provisions of this Article.~~

R9-8-1616. ~~Licenses for manufacture and renovation of bedding~~ Repealed

~~A. The Department will issue a license authorizing the manufacture, repair or renovation of bedding to any person making application on the form prescribed by the Department. Incomplete applications may be denied with a statement of the reasons therefor. Two categories of licenses are issued under this Section: to persons engaged in the manufacture of bedding, whether from new material or from secondhand material; and to persons engaged in the renovation of secondhand bedding.~~

~~B. Every license issued by the Department under this Section shall be for the exclusive use of the person to whom it is issued and the number of the license issued shall not thereafter be issued to or used by any other person. Upon request, the Department may authorize the use of a number assigned to a manufacturer or renovater by another state, provided that that number is not already in use by a person licensed under this Section.~~

~~C. A license issued under this Section may be suspended or revoked if the Department determines that the licensee has violated the regulations of this Article or the provisions of Article 11, Chapter 6, Title 36, A.R.S.~~

R9-8-1617. ~~"Off-Sale" tags~~ Repealed

~~A. Bedding or material which is offered for sale, or which could be offered for sale, in violation of the regulations of this Article or the provisions of Article 11, Chapter 6, Title 36, A.R.S. shall be placed "Off-Sale" by an authorized state bedding inspector by affixing to such bedding or material an "Off-Sale" tag, attached in such a manner as to be readily open to view. "Off-Sale" tags are not to be removed, defaced, altered, concealed or obstructed from view in any manner by any person except as provided in subsection (D) of this regulation.~~

~~B. "Off-Sale" tags placed on bedding or material pursuant to this regulation shall contain the following:~~

~~This article is NOT TO BE SOLD because it does not comply with the provisions of the Bedding Act of the State of Arizona and has accordingly been placed "Off-Sale" as provided for in A.R.S. § 36-796.01, subsection (E), and rule R9-8-1617, A.C.R.R. This tag may only be removed by a state bedding inspector or as provided in A.C.R.R. R9-8-1617(D).~~

~~C. Bedding or material which has been placed "Off-Sale" pursuant to this Section shall be removed from sale and shall not be offered for sale until such time as an authorized state bedding inspector has removed the "Off-Sale" tag or the bedding or material has otherwise been released for sale pursuant to subsection (D) of this Section.~~

~~D. "Off-Sale" tags affixed to bedding or material pursuant to this Section may be removed only by an authorized state bedding inspector or by the owner of the bedding or materials or his agent, upon receipt of a written "Release for Sale" which has been duly issued by the Department.~~

R9-8-1618. ~~Labeling requirements~~ Repealed

~~The kind and grade of filling material shall be included on the law label as provided in R9-8-1619 and when included the description shall comply fully with these regulations, including but not limited to the regulations regarding labeling nomenclature.~~

R9-8-1619. ~~Official law label requirements~~ Repealed

~~A. Law labels shall be securely fastened to completed articles of bedding in a manner approved by the Department and in such a manner as to be readily open to view. Law labels are not to be concealed or obstructed from view in any manner. All law labels shall be attached to the bedding at the place of manufacture.~~

~~B. Law labels shall be constructed of substantial cloth or material of equal quality.~~

~~C. Law labels shall include the following:~~

~~1. A white label printed in black ink shall be used for all bedding manufactured from all new material.~~

~~2. A red label printed in black ink shall be used for all bedding manufactured in whole, or in part, from second hand material.~~

~~3. A green label printed in black ink shall be used for bedding renovated, reworked or repaired for the owner, for the owner's own use and from the owner's material, which is in whole or in part secondhand material. When such bedding is not to be used by the owner, such as bedding renovated for resale, it shall be labeled with a red label.~~

~~D. All law labels shall be at least 2" x 3" in size, provided, however, that the labels shall be larger when the required size of the type or required statements make it necessary or when otherwise required by law. The minimum size of type shall be 1/8 inch in height and all printing shall be in English.~~

~~E. All law labels shall include the following statements, headings and other information:~~

~~1. The statement "Under penalty of law this tag is not to be removed except by the consumer" shall appear at the top of the label.~~

~~2. White labels shall include the heading "ALL NEW MATERIAL"; red labels shall include the heading "SECONDHAND MATERIAL"; and green labels shall include the heading "NOT FOR SALE, OWNER'S OWN MATERIAL WHICH IS SECONDHAND MATERIAL".~~

~~3. All white labels shall contain a description of the kind and grade of filling material, expressed in percentage by weight when mixed. Percentages shall be computed on the basis of avoirdupois weight of the filling material present and shall be designated on the label in order of predominance, the largest component in percentages by weight first.~~

~~4. All labels shall include the manufacturer's or renovator's license number assigned or approved by the Department pursuant to rule R9-8-1616.~~

~~5. White labels shall include the statement "Certification is made by the manufacturer that the materials in this article are described in accordance with law".~~

~~6. Red labels which include a description of filling materials shall do so in accordance with paragraph (3) of this subsection and shall include the statement "Certification is made by the manufacturer that the materials in this article are described in accordance with law".~~

~~7. All green labels shall include the statement "Certification is made that this article was received from the owner for renovation and contains only material provided by the owner, part or all of which, is secondhand material".~~

8. Green labels shall include the name and address of the owner of the bedding.
9. White and red labels for sleeping bags, mattresses, comforters, mattress pads, pads, box springs and pillows shall include the width and length of the bedding expressed in inches and the total net weight of all filling materials contained in the bedding. Decorator pillows need not show size.

E. All law labels shall be prepared in the following form:
1. Articles of bedding manufactured from all new material:

(WHITE LABEL)

Space for stitching
Under penalty of law this tag not to be removed except by the consumer. ALL NEW MATERIAL consisting of
License No. / Certification is made by the manufacturer that the materials in this article are described in accordance with law.
Name and address of vendor or manufacturer

Minimum tag size 2" x 3"

← Minimum type size 1/8 inch in height.

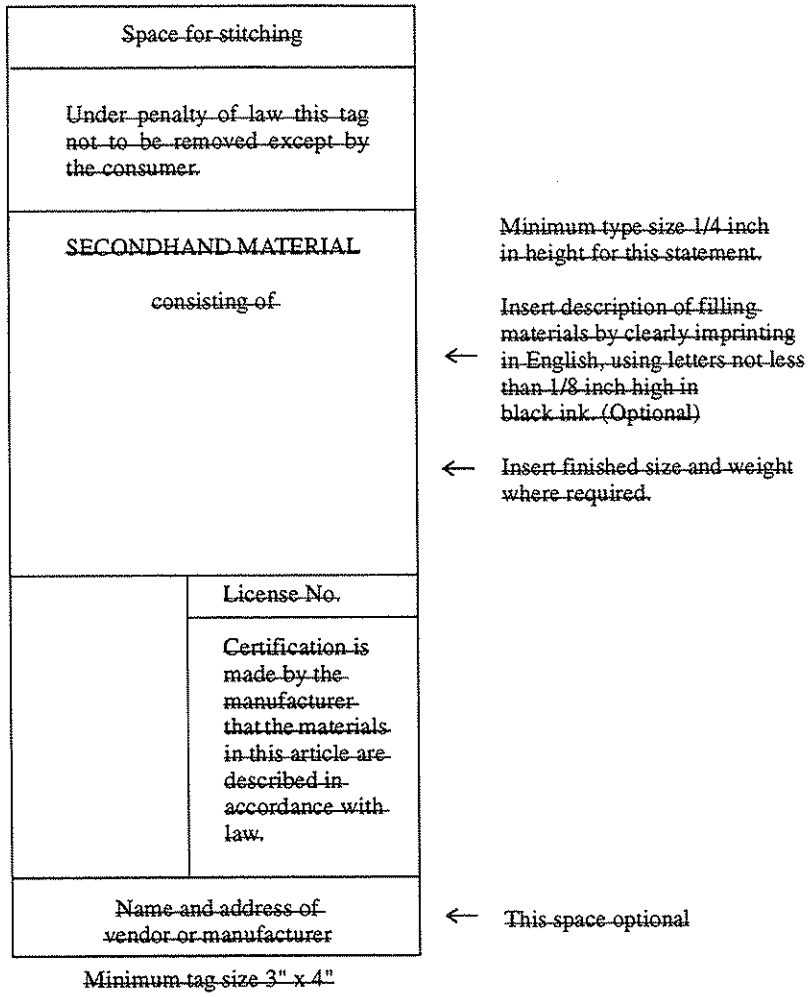
← Insert description of filling materials by clearly imprinting in English, using letters not less than 1/8 inch high in black ink.

← Insert finished size and weight where required.

← This space optional

2. Articles of bedding manufactured in whole or in part from secondhand material:

(RED LABEL)



3. Bedding renovated, reworked or repaired for the owner, for the owner's own use and from the owner's material which is in whole or in part secondhand material:

(GREEN LABEL)

(Space for stitching)	
Under penalty of law this tag not to be removed except by the consumer.	
NOT FOR SALE OWNER'S OWN MATERIAL WHICH IS SECONDHAND MATERIAL Certification is made by that this article was received from the owner for renovation and contains only material provided by the owner, part or all of which, is secondhand material. This article consists of:	← Minimum type size 1/8 inch in height in capital letters. ← Insert description of filling materials by clearly imprinting in English, using letters not less than 1/8 inch high. (Optional)
Renovated or repaired by:	← This space optional.
License No. _____ Date _____	
Owner: Address:	

Minimum tag size 2" x 3"

G. Labels may contain information in addition to that required under this rule, provided the information is not inconsistent or contrary to the requirements or purposes of this rule, and complies with all applicable regulations of this Article.

R9-8-1620. Universal filling material requirements Repealed

All filling materials shall be reasonably clean and free from trash, pith, pulp, extraneous material, sludge, oil, grease, fat, filth, excreta, skin, epidermis, disagreeable odors, and other contamination.

R9-8-1621. Oil and grease limitations Repealed

When any filling material contains more than 5.0% of oil, grease, or fat or a combination thereof, the material is not permissible for sale in Arizona.

R9-8-1622. Sludge limitation Repealed

When any filling material contains more than 0.3 milliliter of sludge, the material is not permissible for sale in Arizona. Sludge shall mean any material from a 20 gram sample of filling material which will settle out of a solution which has passed through a 40-mesh sieve.

R9-8-1624. Universal definitions and labeling requirements Repealed

The following terms shall be stated on the law label when applicable, in addition to other labeling nomenclature required by these regulations:

1. "Batting" means fibers which have been carded or garnetted into layer form.
2. "Bleached" means any product whose intrinsic color has been removed and whiteness improved by treating with a chemical compound.
3. "Colored" or "dyed" means any filling material which has been treated and impregnated with coloring matter.
4. "Damaged" means any filling material or article the appearance, function, or value of which has been adversely affected by machine processing or by exposure to fire, water, or other elements or source.
5. "Fibers of Unknown Kind" means miscellaneous new textile materials of unknown origin and, for practical purposes, unknown fiber content.

6. "Pad" means any filling material which is interwoven, punched, pressed, shaped, or otherwise fabricated into pad form.
7. "Resinated or resin treated" means any filling material treated with a combination of synthetic resin or a combination of synthetic resin and latex.
8. "Rubberized" means any filling material which has been treated with a latex compound.

R9-8-1625. Optional labeling for cotton filling material Repealed

In lieu of the requirement set forth in R9-8-1618 of these regulations, any cotton filling material may be designated on the law label as "Blended Cotton" without stating the types of cotton present.

R9-8-1626. Definitions of types of cotton Repealed

In describing the types of cotton on the new label pursuant to R9-8-1618, the following terms shall be used as indicated:

1. "Cotton" means a vegetable seed fiber consisting of unicellular hairs attached to the seed of several species of the genus Gossypium of the family Malvaceae.
2. "Staple" means the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed).
3. "Comber" means the cotton waste resulting from running card sliver through a combing machine.
4. "Fly" means the cotton waste resulting when cotton is introduced to the carding machine.
5. "Gin flues" mean the cotton waste resulting from staple cotton in the ginning mill.
6. "Picker" means the cotton waste remaining after cotton has been run through the picker in the cotton mill.
7. "Strips" means the cotton waste produced by or removed from the carding cloth following the carding process.
8. "Linters" means the fibrous growth resulting from the first cut of the cottonseed (subsequent to the usual first process of ginning) in the cotton oil mill.
9. "Second cut linters" means the fibrous growth resulting from the second cut of cottonseed in the cotton oil mill.

R9-8-1627. Labeling requirements -- definitions Repealed

In describing the types of fowl plumage on the law label pursuant to R9-8-1618, the following terms shall be used as indicated:

1. "Crushed feathers" means feathers which have been processed by a curling, crushing, or chopping machine and includes the fiber resulting from such processing and which has changed the original form of the feather without removing the quill.
2. "Damaged feathers" means feathers which have been broken, injured by insects or depreciated from the original value in any manner.
3. "Down" means the undercoating of waterfowl, consisting of the light fluffy filaments "barbs" growing from 1 quill point but without any quill shaft.
4. "Down fiber" means the detached barbs from down and plumules and detached barbs from the basal end of waterfowl quill shaft which are indistinguishable from the barbs of down.
5. "Feathers" means the plumage or out-growth forming the contour and external covering of fowl which are whole in structure and which have not been processed in any manner other than dusting and washing.
6. "Feather fiber" means the detached barbs of feathers which are not joined or attached to each other.
7. "Landfowl" means plumage derived from chickens and turkeys.
8. "Plumage" means the outer covering of fowl.
9. "Plumules" means waterfowl plumage with underdeveloped soft and flaccid quill with barbs indistinguishable from those of down.
10. "Quill feathers" means feathers exceeding 4 inches in length and/or having a quill point exceeding 6/16ths of an inch in length.
11. "Residue" means quill pith, quill fragments, trash or foreign matter.
12. "Waterfowl" means plumage derived from ducks and geese.
13. "Duck" means plumage derived from ducks.
14. "Goose" means plumage derived from geese.
15. "Turkey" means plumage derived from turkeys.
16. "Chicken" means plumage derived from chickens.

R9-8-1628. Down products Repealed

A. Any industry product labeled as "down", "duck down", or "goose down" shall conform to the following composition requirements:

Down and plumules	75% minimum
Extraneous (total of components below)	25% maximum
Waterfowl feathers (feathers over 2.5 inches not permitted)	25% maximum
Down fiber	15% maximum
Feather fiber	15% maximum
Landfowl feather and fiber	2% maximum
Residue	2% maximum

B. Any industry product labeled as "waterfowl feathers", "duck feathers", or "goose feathers" shall conform to the following composition requirements:

Waterfowl feathers	80% minimum
Extraneous (total of components below)	20% maximum
Landfowl feathers and fiber	8% maximum
Feather fiber	5% maximum
Down and down fiber	5% maximum
Residue	2% maximum

C. The specie of waterfowl plumage need not be designated but, when designated, the product shall contain a minimum of 90% of such plumage.

D. When plumage products are designated as containing a numerical percentage of down and feathers, the down portion stated shall be the actual amount of down and plumules present as defined in paragraphs (3) and (5) of R9-8-1627. The feather portion shall comply with paragraph (5) of R9-8-1627.

R9-8-1629. Tolerances Repealed

A. When any plumage product exceeds the permissible amount of residue, landfowl plumage, down fiber, and feather fiber as provided for in applicable Sections of these regulations, the entire amount of such components present shall be stated on the law label.

B. Plumage products labeled as down, duck down, or geese down shall have printed on the lower portion of the law label the following: "Note: This product contains an amount of feathers not exceeding that allowable by law".

C. The oxygen number of any filling material of waterfowl or landfowl origin shall not exceed 20 grams of oxygen per 100,000 grams of sample.

R9-8-1630. Wool and hair regulations Repealed

In describing the type of wool or hair on the law label pursuant to R9-8-1618, the following terms shall be used as indicated:

1. "Wool" means the fleece of sheep which has been scoured and carbonized. It shall be free of kemp and vegetable matter.
2. "Hair" means the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats.
3. Hair shall be classified and labeled as either "horse tail hair", "horse mane hair", "hog hair", "cattle tail hair", "cattle hide hair", or "goat hair".

R9-8-1631. Man-made fiber regulations Repealed

In describing the types of man-made fibers on the law label pursuant to R9-8-1618, the following terms shall be used as indicated:

1. "Acetate" means a manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92% of the hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.
2. "Acrylic" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of acrylonitrile units $(-CH_2-CH-)$.
3. "Azlon" means a manufactured fiber in which the fiber-forming substance is composed of any regenerated naturally occurring proteins.
4. "Glass" means a manufactured fiber in which the fiber-forming substance is glass.
5. "Metallic" means a manufactured fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal.
6. "Modacrylic" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of less than 85% but at least 35% by weight of acrylonitrile units

$$CH_2-CH-$$
$$|$$
$$CN$$

7. "Nylon" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polyamide having recurring amide groups (-C-NH) as an

$$\begin{array}{c} \\ | \\ O \end{array}$$

integral part of the polymer chain.

8. "Nytril" means a manufactured fiber containing at least 85% of a long chain polymer of vinylidene dinitrile $(CH_2-C(CH)_2-)$ where the vinylidene dinitrile content is no less than every other unit in the polymer chain.
9. "Olefin" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of ethylene, propylene, and other olefin units.
10. "Polyester" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of any ester of a dihydric alcohol and terephthalic acid $(p-HOOC-C_6H_4-COOH)$.
11. "Rayon" means a manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15% of the hydrogen of the hydroxyl groups.
12. "Saran" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 80% by weight of vinylidene chloride units $(-CH_2CCl_2-)$.
13. "Spandex" means a manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85% of a segmented polyurethane.
14. "Vinal" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 50% by weight of vinyl alcohol units $(-CH_2-CHOH-)$, and in which the total of the vinyl alcohol units and any 1 or more of the various acetal units is at least 85% by weight of the fiber.
15. "Vinyon" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of vinyl chloride units $(-CH_2-CHCl-)$.
16. "Rubber" means a manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories:
    a. A manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (non-crystalline) polyolefins.
    b. A manufactured fiber in which the fiber-forming substance is copolymer of acrylonitrile and diene (such as butadiene) composed of not more than 50% but at least 10% by weight of acrylonitrile units

$$(-CH_2-CH-).$$
$$|$$
$$CN$$

    c. A manufactured fiber in which the fiber-forming substance is a polychloreprene or a copolymer of chloroprene in which at least 35% by weight of the fiber-forming substance is composed of chloroprene units

$$(-CH_2-C-CH-CH_2-).$$
$$|$$
$$Cl$$

R9-8-1632. Miscellaneous vegetable fiber regulations Repealed

In describing the type of vegetable fiber, other than cotton, on the law label pursuant to R9-8-1618, the following terms shall be used as indicated:

1. "Cellulose fiber" means wood or other vegetable growth reduced to a fibrous state.
2. "Coco fiber" or "coir fiber" means the still elastic fiber obtained from the outer husk of the coconut.
3. "Corrugated fiber board" means thick coarse paper, corrugated to give it elasticity.
4. "Excelsior" means shredded thread-like wood fibers but shall not include waste products such as shavings, sawdust, or similar waste.
5. "Flax fiber" means the fiber derived from the plant of the genus Linum Usitatissimum raised primarily for fiber.
6. "Jute fiber" means the best fiber derived from several species of the Corchorus plant.
7. "Kapok" means the mass of fibers investing the seed of the kapok tree (Ceiba Pentandra).
8. "Milkweed fiber" means the surface fiber from the inside of the seed pods of milkweed plants (Asclepias).
9. "Moss" means the processed fibers of epephytic plants forming pendant tufts from trees.
10. "Palm fiber" means the fibrous material obtained from the leaf of a palm, palmetto, or palmyra tree.
11. "Sisal fiber" means the leaf fiber derived from the Agave Sisalana and similar species of Agaves.

12. "Tula fiber" means the leaf fiber derived from the Tula Istle and similar species of Agaves.

R9-6-1633. Treatment and cleaning of secondhand bedding Repealed

No person shall sell, offer for sale or include in a sale any item of secondhand bedding or any item of bedding of any type manufactured in whole or in part from secondhand material, including their component parts or wiping rags unless such material has been thoroughly cleaned of all dirt, grime and grease and treated by 1 of the methods described in rules R9-8-1641, R9-8-1642, R9-8-1643, R9-8-1644, R9-8-1645 or R9-8-1646 or by some other method approved in writing by the Director, except that the methods described in rules R9-8-1642 and R9-8-1646 shall be used to treat only the bedding and materials described in those Sections.

R9-8-1634. Licenses to apply sterilization, disinfection, or disinfestation treatment Repealed

A. Only bedding which has been cleaned and treated by sterilization, disinfection, or disinfestation by persons licensed under this Section and by methods provided for under the regulations of this Article shall be deemed to comply with the requirements of A.R.S. § 36-796.04, subsection (A).

B. An applicant for a license to apply sterilization, disinfection, or disinfestation treatment shall make application on forms provided by the Department and shall include with the application detailed plans in duplicate (2 copies) of the proposed equipment or procedures to be utilized.

C. An authorized state bedding inspector may require experimental tests including data to determine the effectiveness and safety of any apparatus or device used or proposed to be used to carry out the sterilization, disinfecting or disinfesting provisions of this Article.

D. Every license issued by the Department under this Section shall be for the exclusive use of the person to whom it is issued and the number of the license issued shall not thereafter be issued to or used by any other person.

E. A license will be issued under this Section only if the applicant's plans reflect that the proposed equipment and procedures will comply with the requirements of this Article pertinent to the application of sterilization, disinfection or disinfestation treatment.

F. Issuance of a license under this Section does not constitute a certification by the Department that the equipment or procedures to be used by the licensee comply with local building and safety codes.

R9-8-1635. Tests and inspections of treatment equipment Repealed

All treatment facilities are subject to tests for proficiency of operation, and the premises, equipment, books, and records kept in connection therewith are subject to inspection at all reasonable times.

R9-8-1636. Treatment chamber and identification; numbering of lot Repealed

When more than 1 treatment chamber is operated on any premises by the same person, each chamber shall be permanently identified by a letter, beginning with "A" and proceeding in alphabetical order. All lots processed through each chamber shall be numbered consecutively.

R9-8-1637. Charts Repealed

Vacuum-time recording charts on vacuum chemical chambers and heat-time recording charts on dry heat chambers shall be prepared and in addition to the device-recorded data have noted on the face thereof the date of the operation, the chamber letter, if any, and the lot number used in connection with each operation. The following is an example of the correct form of keeping charts:

Date	Chamber	Lot No.
2/23/66	A	224
2/24/66	B	225

R9-8-1638. Records Repealed

A. Records shall be prepared which show the date of treatment, the chamber letter, if any, the lot numbers and tag numbers in consecutive order, the names of the persons for whom the bedding was treated, and the names and addresses of the receivers if different than the source. All such records as well as charts required by regulations R9-8-1637, R9-8-1641 and R9-8-1642 shall be kept for a period of 1 year.

B. Mattresses and pads with duofolds or divans shall be removed from such articles and treated and recorded separately.

C. The following is an example of the correct form of keeping records:

Date	Lot No.	Tag Nos.	Articles	Source (Private individual or Firm Name)	Name & address of receiver if different from source
2/23/74	A 224	440-444	5 mattresses	Jim's Furn Store	
		445	1 divan	Hilmar Furn Store	
		446-447	2 pads	Ace Furn Store	
		448	1 Chesterfield (w/3 cushions)	Ace Furn Store	
2/24/74	B 225	449	VOID	Voided labels to be picked up by inspectors	
		450-452	3 mattresses	Grand Furn Co	
		453-458	6 mattresses	Grand Furn Co	
		459	1 mattress	Mr. O.K. Smith	
		460	1 davenport (w/3 cushions & 2 pillows)	Mrs. A.F. Wood	
		461	1 studio couch (w/1 mattress & 3 pillows)	Antique Store	Bob Brown, 333 Broadway, Phoenix Arizona

D. A tag shall apply to a unit and all its parts.

E. No person shall knowingly enter false information in any record required to be maintained under these regulations nor shall any person knowingly remove, secrete, destroy, mutilate, deface, or alter any such records without written permission from the Department.

R9-8-1639. Storage of formaldehyde Repealed

Formaldehyde shall be stored in air-tight containers which shall be kept tightly closed. Storage under other conditions may permit the crystallization of the formaldehyde in the solution.

R9-8-1640. Filling materials Repealed

Baled filling materials shall not be treated while still in the bale.

R9-8-1641. Vacuum chemical method Repealed

A. The vacuum chamber shall be placed under 29-inch vacuum. For a chamber having a capacity of 500 cubic feet, 3 quarts of formaldehyde 40 percent solution, and 3 pounds of potassium permanganate shall be placed in a water-jacketed auxiliary tank previously heated to 120° F. and the formalin vapors introduced slowly into the chamber. This will cause the vacuum to drop about 26 inches. A dosage of carbon dioxide gas shall then be introduced into the chamber until the vacuum drops to 24 inches. One-half gallon of carbon disulphide shall then be introduced into the chamber after running it through not less than 3 feet of coil in another water-jacketed auxiliary tank previously heated to 180° F. This process will reduce the vacuum to about 22 inches. Another dosage of carbon dioxide shall then be passed into the chamber until the vacuum is reduced to about 20 inches. After all gases have been admitted into the chamber, the vacuum shall be dropped to a point between 15 inches and 12 inches, after which all valves shall be tightly closed and the chamber held at this vacuum for a minimum of 2 hours. At the end of this time, air shall be admitted until the gauge reads 0. The chamber shall then be pumped out to 25 inches of vacuum not less than twice to remove the fumes, and then opened. If the capacity of the vacuum chamber is more or less than 500 cubic feet, the dosages of the respective gases shall be increased or decreased proportionately.

B. A suitable recording device approved by the Department shall be installed and maintained to record on a chart the time and vacuum factors prevailing during the entire operation.

R9-8-1642. Dry heat method Repealed

A. In sterilizing by the dry heat method, a temperature of 230° F. shall be maintained in all parts of an approved chamber for at least 1 hour and 15 minutes (an alternate time-temperature standard for fragile or heat sensitive articles shall be 205° F. for 1 hour and 30 minutes) and thirty-2 ounces of a 40 percent solution of formaldehyde shall be vaporized and liberated within the chamber for every 1,000 cubic feet of chamber and circulating ducts displacement. The formaldehyde solution shall be introduced into the chamber from an approved outside receptacle after the chamber has been sealed and immediately before the above-described temperature is reached and shall be vaporized in an approved receptacle within the chamber. All chambers shall be equipped with racks or devices and the articles to be sterilized shall be so placed therein that complete circulation of heat and gases around every article being sterilized shall be attained. All chambers shall be insulated sufficiently to insure maintenance of temperature and shall be tightly sealed to prevent any leakage of gases. A thermostat shall be connected with the heating device to provide and maintain a reasonably uniform temperature at + or -5° of the prescribed temperature.

B. A suitable recording device approved by the Department shall be installed and maintained to record on a chart the time and temperature prevailing during the entire operation.

C. Each chamber in which the dry heat method of sterilization is performed shall be equipped with a fresh air inlet and an exhaust fan and duct discharging to the outside air. To clear the chamber of dangerous gases and fumes upon completion of the sterilization cycle, the fresh air inlet to the chamber shall be opened and the exhaust fan operated for 30 minutes or until all dangerous fumes have been exhausted through the discharge duct. The sterilized articles may then be removed from the chamber.

D. Foam mattresses, pillows, and cushions or padding.

1. The temperature of 230° F. for 1 hour and 15 minutes required in the dry heat/formaldehyde method can be changed to 205° F. for 1 hour and 30 minutes to alleviate any problems encountered with foam products.
2. Foam mattresses, pillows, and cushions which are enclosed in a removable cover need not be subjected to treatment by the above method provided the cover is removed and laundered, or replaced with new material, and the foam itself is washed off with a quaternary ammonium compound. The yellow tag may then be attached to the laundered cover or to the new cover, whichever is used.
3. Foam mattresses, pillows, and cushions whose covers are not removable must still be treated by the methods described in subsections (A) or (D)(1).

R9-8-1643. Feather and down method Repealed

In sterilizing secondhand feathers and down, the feathers and down of each customer shall be separately treated and not combined with feathers and down from other sources.

A. In sterilizing feather- and down-filled pillows or other articles, the contents shall be removed from ticks and covers or containers and the feathers and down sterilized loose, or they may be placed in coarse mesh bags, loosely filled, and then sterilized.

B. Ticking must be dry-cleaned or laundered in water of a temperature of not less than 212° F. or new ticking shall be used.

C. All feathers and down, loose or in mesh bags, shall be placed in a closed receptacle and subjected to streaming live steam out of jets not less than 1-quarter inch in diameter. One jet shall be installed in the receptacle for every 50 cubic feet of displacement or fraction thereof.

1. When feathers and down are sterilized in mesh bags, the material shall be inserted in the bags sufficiently loose to permit the steam and heat to penetrate to all of the material.
2. Bags shall be inserted in the receptacle so that they can tumble freely and not restrict the penetration of the steam and heat into the feathers and down.

D. The streaming steam shall be injected while the mesh bags or loose feathers and down are in motion to bring about complete sterilization, after which the steam shall be forced out of the chamber and the feathers and down subjected to sufficient heat for the period of time necessary to thoroughly dry them.

E. The Muroza or kindred types of feather and/or down sterilizers may be used provided the following requirements are complied with:

1. A steam pressure of 100 pounds shall first be developed.
2. The sterilizing chamber shall be heated to 290° F.
3. The feathers and/or down shall then be drawn into the sterilizing chamber and subjected to streaming live steam for a period of at least 1 minute.

4. The feathers and/or down shall then be subjected to heat at not less than 290° F. for a period of at least 7 1/2 minutes.

R9-8-1644. Wet method Repealed

In sterilizing by the wet method, the material to be sterilized shall be immersed in water, maintained at a temperature of 212° F. for at least 10 minutes with proper arrangements for agitation of the material while in the vat, after which all of the material shall be capable of passing through a hole 1 1/2 inches in diameter.

R9-8-1645. Steam under pressure method Repealed

In sterilizing by this method, the material to be sterilized shall be subjected to steam under pressure for a period of 30 minutes, the pressure of the steam to be a minimum of 15 pounds per square inch, the temperature of the steam to be a minimum of 248° F. A properly checked steam pressure gauge and a thermometer, both visible from the outside of the chamber, shall be provided.

R9-8-1646. Disinfecting Repealed

Secondhand dinette chairs and office chairs with plastic covers, pads and metal frames, or molded polyfoam frames, plastic covered hassocks, and bean bag chairs with polystyrene bead fillers which appear to be free of insect infestation may be damp cleaned and disinfected utilizing a disinfectant product of a class approved by the Department for this purpose.

R9-8-1647. Treatment and sterilization tags Repealed

A. All articles of secondhand bedding sold, offered for sale or included in a sale, which are required to be cleaned and treated pursuant to R9-8-1633, shall have a yellow tag evidencing treatment and cleaning of the bedding in accordance with the rules and regulations of the Department firmly attached to the items in such a manner as to be readily open to view.

B. Yellow tags shall be not less than 3" x 4" in size and shall be made of substantial cloth or a material of equal quality such as erasure proof paper of substantial weight and of a grade that will not change color on application of an adhesive. The yellow tag shall be affixed to the item of bedding with silicate of soda or an equivalent adhesive or by a fastener of a class approved by the Department for this purpose.

C. All yellow tags applied under this Section shall be numbered consecutively by the licensee applying the tags.

D. Yellow tags shall contain the information required under this Section printed in black ink and in the English language.

E. The following types of yellow tags are authorized under this Section:

1. Type T, which shall be attached to all articles of bedding treated under R9-8-1646.
2. Type S, which shall be applied to all articles of bedding treated by a method other than as provided in R9-8-1646.

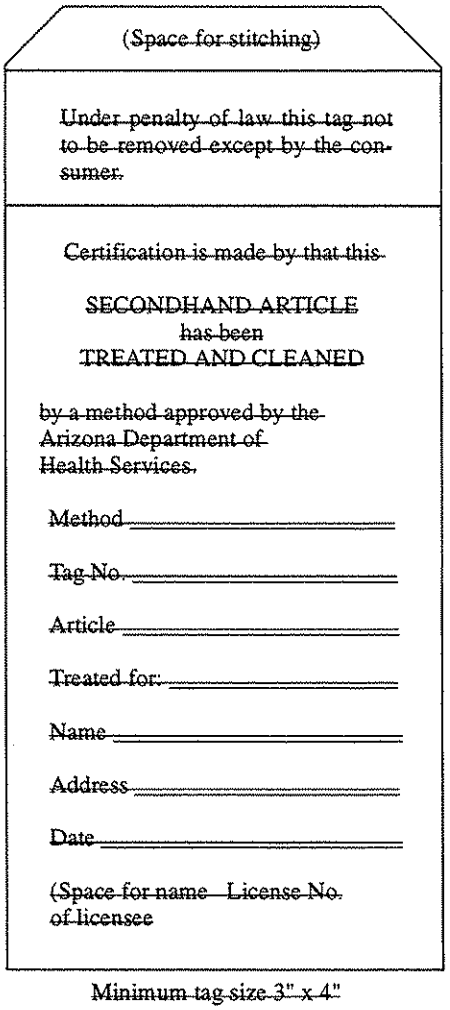
F. Yellow tags shall contain the following statements, headings, and information:

1. All yellow tags shall contain the statement "Under penalty of law this tag is not to be removed except by the consumer".
2. Type T yellow tags shall contain the statement "Certification is made that this SECONDHAND ARTICLE has been TREATED AND CLEANED by a method approved by the Arizona Department of Health Services".
3. Type S yellow tags shall contain the statement "Certification is made that this SECONDHAND ARTICLE has been STERILIZED by a method approved by the Arizona Department of Health Services."
4. Type S yellow tags shall include the lot number in which the article was sterilized.
5. All yellow tags shall contain the following information:
   a. Tag number;
   b. Description of the article or filling material treated;
   c. The number of loose cushions, pads, pillows, etc. belonging to and forming a part of the article of bedding;
   d. Name of the person for whom the article was treated;
   e. Date treated;
   f. Name and address of the licensee performing the treatment;
   g. License number assigned by the Department to the licensee performing the treatment.

G. The form of the yellow tag shall be as follows:

a. For articles of secondhand bedding treated by the method specified in rule R9-8-1646 or where this tag is specified by the Department:

(YELLOW LABEL -- TYPE T)



Minimum tag size 3" x 4"

Black ink - English language

← The words "SECONDHAND ARTICLE" AND "TREATED AND CLEANED" shall be in 24-point Gothic type.

← Minimum type size 1/8 inch in height

b. For articles of secondhand bedding treated by a method specified in rules R9-8-1641 through R9-8-1645 or where this tag is specified by the Department:

(YELLOW LABEL -- TYPE S)

Under penalty of law this tag not to be removed except by the consumer.	Black ink - English language.
Certification is made by that this SECONDHAND ARTICLE has been STERILIZED	← The words "SECONDHAND ARTICLE" and "STERILIZED" shall be in 24-point Gothic type.
by a method approved by the Arizona Department of Health Services.	← Minimum type size 1/8 inch in height
Method _____ Lot No. _____ Tag No. _____ Article _____ _____ Sterilized for: _____ Name _____ Address _____ Date _____ (Space for name _____ License No. of licensee	

Minimum tag size 3" x 4"

R9-8-1648. Molded latex foam rubber regulations Repealed

The term "Latex Foam" or "Latex Foam Rubber" may be used interchangeably and shall mean an insert made from synthetic latex foam, natural latex foam, or a mixture of natural and synthetic latex foam.

R9-8-1649. Violations Repealed

A.R.S. § 36-796.08 provides that a person who violates any provisions of Article 11, Chapter 6, Title 36, A.R.S. or of any rule established thereunder is guilty of a misdemeanor.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE
GENERAL ADMINISTRATION

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

Article 1	Amend
R15-10-101	Amend
R15-10-102	Repeal
R15-10-102	New Section
R15-10-105	Amend
R15-10-107	Amend
R15-10-109	Amend
R15-10-117	Amend
R15-10-121	Amend
R15-10-130	Amend
R15-10-131	Amend
R15-10-132	Amend
R15-10-201	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statutes: A.R.S. §§ 42-105 and 41-1003

   Implementing statutes: A.R.S. §§ 42-122, 42-123, and 42-124

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Ernest Powell, Tax Analyst

   Address: Tax Research and Analysis Section
   Arizona Department of Revenue
   1600 West Monroe
   Phoenix, Arizona 85007

   Telephone: (602) 542-4672

   Fax Number: (602) 542-4680

4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

   The rules provide taxpayers with the procedures to follow when appealing a decision of the Department regarding taxes administered under A.R.S. § 42-111. The Department is proposing to amend the rules to make them more clear, concise, and understandable and to conform to current rulemaking guidelines. In addition, the Department is proposing to amend the rules to incorporate legislative changes.

5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   Identification of the Rulemaking:

   The Department is proposing to amend the rules to make them more clear, concise, and understandable and to conform to current rulemaking guidelines.

   In addition, Laws 1995, Chapter 251 added a requirement that administrative hearings regarding contested cases of the Department be conducted by the newly created Office of Administrative Hearings. Laws 1996, Chapter 102 added a requirement for the Office of Administrative Hearings to conduct hearings regarding "Appealable agency actions." Hearings regarding income tax, withholding tax, estate tax, or any tax issue related to information associated with income tax, withholding tax, or estate tax will continue to be conducted by the Department. The Department is proposing to amend the rules to incorporate the legislative changes.

   Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

   It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit taxpayers by making the rules more clear, concise, and understandable. In addition, the amendment of the rules will benefit the taxpayers by making the rules conform with current statutes. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Ernest Powell, Tax Analyst

Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax Number: (602) 542-4680

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: September 29, 1997

Time: 2 p.m.

Location: Department of Revenue Building
1600 West Monroe, Small Conference Room, B1 Floor
Phoenix, Arizona 85007

Nature: Public Hearing

A person may submit written comments regarding the proposed rules by submitting the comments no later than 5 p.m., September 29, 1997, to the person above.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

10. **Incorporations by reference and their location in the rules:**

None.

11. **The full text of the rules follows:**

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE GENERAL ADMINISTRATION

ARTICLE 1. APPEAL ~~HEARING~~ PROCEDURES

Section
R15-10-101. Definitions
R15-10-102. Scope of Article 1 ~~Matters Subject to the Hearing Procedure Rules~~
R15-10-105. Petition
R15-10-107. Timeliness of Petition
R15-10-109. Memoranda
R15-10-117. Evidence
R15-10-121. Subpoena by Petitioner
R15-10-130. Decisions and Orders
R15-10-131. Review of Decision of the Hearing Officer or ALJ
R15-10-132. Appeal of the Final Order of the Department of Revenue ~~to State Board of Tax Appeals, Division Two~~

ARTICLE 2. ADMINISTRATION

Section
R15-10-201. Closing Agreements Relating to Tax Liability

ARTICLE 1. APPEAL ~~HEARING~~ PROCEDURES

R15-10-101. Definitions

For purposes of ~~the hearing procedure rules in~~ this Article:

1. "ALJ" means an administrative law judge who issues decisions on behalf of the Office of Administrative Hearings established by A.R.S. § 41-1092.01.

2. ~~1.~~ "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is ~~shall be~~ considered timely if filed on the following business day.

3. ~~2.~~ "Department" means the Arizona Department of Revenue as represented by personnel of the applicable section or area.

4. ~~3.~~ "Notice" means a ~~the~~ written notification, ~~determination~~ issued by the Department, of a tax assessment, refund denial, or any other action taken or proposed to be taken that is subject to appeal as a contested case or an appealable agency action under A.R.S. Title 41, Chapter 6 ~~as issued by the Department.~~

5. ~~4.~~ "Petition" means a written request for hearing, correction, or redetermination ~~of a tax assessment or of a refund denial~~, including all applicable attachments.

6. ~~5.~~ "Petitioner" means the taxpayer or the representative of the taxpayer who files a petition.

7. "Refund denial" means a taxpayer's claim for a refund of tax, penalty, interest, or refundable credit that has been denied by the Department.

8. ~~6.~~ "Tax assessment" means any tax issue whether associated with ~~a~~ an proposed amount due or the application of penalties and interest.

~~7. "Tax liability" means an amount due including the application of penalties and interest.~~

R15-10-102. Scope of Article 1 ~~Matters Subject to the Hearing Procedure Rules~~

A Department hearing officer shall conduct all hearings regarding taxes administered by the Department under A.R.S. § 42-111, unless A.R.S. § 41-1092.02 requires that an ALJ hear the matter. ~~All matters assigned by the Director to the Hearing Office shall be handled under the hearing procedure rules unless otherwise provided.~~

R15-10-105. Petition

A. The petitioner shall mail the petition ~~shall be directed~~ to the applicable section at the Department of Revenue headquarters in Phoenix, Arizona or hand-deliver the petition to the License and Registration Section in any Department of Revenue office. A petitioner that hand-delivers a petition shall clearly mark the envelope to indicate that it is a petition. The License and Registration Section shall provide a receipt to a petitioner that hand-delivers a petition. The Department shall not charge a ~~No~~ fee ~~is charged~~ for filing a petition or any supporting documents.

1. ~~A petition shall be filed by and in the name of the taxpayer as named on the notice or by and in the full name of the fiduciary or other person authorized to institute the proceedings.~~ The petitioner shall sign the petition.
2. The petitioner ~~A petition~~ shall file the original and 1 copy of the petition ~~be filed in duplicate.~~

B. A petition regarding a tax assessment or a refund denial shall include the following:

1. The taxpayer's ~~Taxpayer's~~ name, address, federal identification number, and all applicable state identification numbers ~~number~~. If there is a difference ~~variance~~ between the taxpayer's name ~~set forth~~ in the notice and the taxpayer's name in the petition ~~of the petitioner~~, the petition shall contain an explanation of ~~explanatory statement regarding~~ the difference ~~variance~~. A petition that concerns a married-filing-joint return shall include the last known name and address of both individuals;
2. A copy of the notice or a statement that ~~which~~ references the tax type and the tax period involved and contains ~~includes~~ the amount of the tax assessment ~~liability~~ or refund claimed including tax, penalties, interest, and refundable credits ~~denial, the tax period, and the amount in controversy if different from the tax assessment~~;
3. A statement of the amount of the tax assessment or refund denial that is protested;
4. ~~3.~~ A statement ~~Statement~~ of errors alleged to have been committed by the Department in the determination of the tax assessment ~~liability~~ or refund denial that is protested;
5. ~~4.~~ A statement ~~Statement~~ of facts and legal arguments upon which the taxpayer relies to support the statement ~~assignment~~ of errors ~~alleged to have been committed by the Department~~;
6. ~~5.~~ The relief ~~Relief~~ sought; and
7. ~~6.~~ Whether an oral hearing is requested.; and
8. The payment for all unprotested amounts of tax, interest, and penalties.

C. A petition regarding matters other than a tax assessment or a refund denial shall include the following:

1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers. If there is a difference between the taxpayer's name in the notice and the taxpayer's name in the petition, the petition shall contain an explanation of the difference;
2. A copy of the notice or a statement describing the action, proposed action, or determination for which a hearing is sought;
3. A statement of errors alleged to have been committed by the Department in its action;
4. A statement of facts and legal arguments upon which the taxpayer relies to support the statement of errors;
5. The relief sought; and
6. Whether an oral hearing is requested.

R15-10-107. Timeliness of Petition

A. A petition regarding taxes other than individual income tax is timely filed with the Department if it is filed as prescribed by R15-10-105(A) ~~is received by the Department~~ within 45 days after the taxpayer receives the tax assessment or refund denial from the Department.

B. A petition for an individual income tax assessment or refund denial is timely filed with the Department if it is filed as prescribed by R15-10-105(A) ~~is received by the Department~~ within 90 days after the Department mails ~~mailing of~~ a notice to the taxpayer.

C. A petition or an extension request filed by mail is considered filed on the date shown by its U.S. Postal Service postmark.

D. A taxpayer or the taxpayer's representative may request that the Hearing Office grant an extension of time to file a petition. ~~A petition not filed on or before the statutory due date is untimely unless a request for extension has been granted.~~

1. The taxpayer or the taxpayer's representative ~~petitioner~~ shall submit an extension request ~~in writing~~ before the expiration of the time allowed for filing the petition in subsection (A) or subsection (B). ~~statutory due date~~ The request shall be in writing and shall show ~~showing~~ good cause for the extension. The Department may grant additional ~~Additional~~ time not to exceed 60 days ~~may be granted~~ at the discretion of the Hearing Office ~~Officer~~ or on stipulation of the parties.
2. If the Hearing Office does not grant the request for an extension in writing, the petition is due on the date specified in subsection (A) or subsection (B).

E. ~~2.~~The Hearing Office ~~Officer~~ shall dismiss a petition which the Hearing Office ~~Officer~~ determines is not timely filed.

F. ~~E.~~If the taxpayer does not file a petition protesting a deficiency assessment within the time prescribed, the taxpayer may, after paying the tax assessment in full, apply for a refund pursuant to statutory provisions.

R15-10-109. Memoranda

A. Any party to the hearing ~~A petitioner~~ may file written memoranda, which further explain the facts or the application of the law to the facts, at any time before the conclusion of the hearing.

B. Any party to the hearing ~~Post-hearing memoranda~~ may submit post-hearing memoranda ~~be submitted by any party to the hearing~~ at the discretion of the Hearing Officer or at the request of the Hearing Officer.

C. Post-hearing memoranda shall be submitted within a reasonable period of time, as agreed to by the parties or as determined by the Hearing Officer.

R15-10-117. Evidence

A. Each party to a hearing may:

1. Call ~~call~~ and examine witnesses,
2. Introduce ~~introduce~~ exhibits,
3. Cross-examine ~~cross-examine~~ opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination,
4. Dispute ~~dispute~~ the testimony of any witness regardless of which party 1st called the witness to testify, and

5. Challenge ~~challenge~~ the evidence presented. ~~The Hearing Officer may call any party at the hearing, or other person who is present, to testify.~~

B. The Hearing Officer shall admit any relevant evidence. ~~The Hearing Officer shall be liberal in admitting evidence,~~ but shall consider objections to the admission of and comments on the weakness of evidence ~~will be considered~~ in assigning weight to the evidence. The Hearing Officer may deny admission of evidence that the Hearing Officer considers ~~which is considered~~ irrelevant, immaterial, or unduly repetitious.

C. A party may substitute an exact copy of an original exhibit.

D. The Hearing Officer may call anyone at the hearing to testify.

R15-10-121. Subpoena by Petitioner

A. A petitioner requesting a subpoena shall apply ~~make application, accompanied by the subpoena being requested,~~ to the Hearing Officer submitting a proposed subpoena at least 10 days before the hearing.

B. The Hearing Office shall not issue ~~issuance of~~ a subpoena for ~~shall not be used to obtain~~ confidential or privileged information.

R15-10-130. Decisions and Orders

A. The Hearing Officer shall issue a written decision, which sets forth the reasons for the decision, after reviewing the evidence submitted by the petitioner and the Department.

B. A decision dismissing a petition as incomplete or not timely filed shall be based on the Hearing Officer's review of the petition, documents available, and any information officially noticed.

C. The Hearing Office shall mail the decision of the Hearing Officer, by certified mail, ~~shall be mailed~~ to the last known address of the taxpayer ~~petitioner, return receipt requested~~. The Hearing Office shall immediately forward a ~~A~~ copy of the decision ~~shall be immediately forwarded~~ to the applicable section in the Department of Revenue and to the Director.

R15-10-131. Review of Decision of the Hearing Officer or ALJ

A. The ~~Except as provided in subsection (B), the~~ decision of the Hearing Officer or ALJ is the final order of the Department of Revenue, ~~as of the date the petitioner receives the decision which is mailed return receipt requested pursuant to R15-10-130(C) unless, within~~ 30 days after the taxpayer ~~petitioner~~ receives the decision unless prior to that time:

1. The petitioner or the Department petitions the Director to review the decision, or
2. The Director independently determines that the decision requires review.

B. The Director may grant an extension of time for filing a petition for review on a showing of good cause, if the request for an extension is in writing and is filed with the Director before the expiration of the 30-day period prescribed in subsection (A).

C. A petition or an extension request filed by mail is considered filed on the date shown by the U.S. Postal Service postmark.

D. ~~C.~~ The Director may grant a review of the ~~A~~ decision of the Hearing Officer or ALJ if 1 of the parties asserts that any of the following causes has materially affected the party's rights ~~may be reviewed based on evidence that the finding is not supported by the facts or by the law. Any of the following causes may be deemed valid in granting a review of a decision by the Hearing Officer~~:

1. The ~~That the findings~~ of fact, conclusions of law, order, or decision are not supported by the evidence or ~~the decision~~ is contrary to law;
2. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Material evidence which has been, newly discovered, ~~which with reasonable diligence could not have been discovered and produced at the hearing~~;
5. Error in admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action; or
6. That the decision is the result of bias or prejudice.

E. The Director may independently determine to review a decision of the Hearing Officer or ALJ if it appears that any of the causes listed in subsection (D) may have materially affected a party's rights.

E. D. The petition for review of the Hearing Officer's or ALJ's decision shall be in writing, shall state the grounds upon which the petition is based, and the Director may grant leave to amend the petition ~~may be amended~~ at any time before it is ruled upon by the Director. At the time of filing, the petitioning party shall also serve a copy of the petition on the other party.

G. E. ~~Notice that~~ the Director has independently determined that the decision requires review, the Director shall send, by certified mail, notification of intent to review to the taxpayer, ~~be mailed, return receipt requested, to the petitioner, and forwarded to the Department~~ not more than ~~within~~ 30 days after ~~of~~ the taxpayer's ~~petitioner's~~ receipt of the Hearing Officer's or ALJ's decision ~~which is mailed return receipt requested pursuant to R15-10-130(C)~~.

H. F. On petition for review, or on the Director's independent review:

1. The Director may open the decision of the Hearing Officer ~~Office~~ or ALJ, take additional evidence, amend findings of fact and conclusions of law, or make new findings and conclusions, and issue a new decision;
2. The Director may issue a decision that summarily ~~denying the petition for review in which case the Director's decision~~ affirms the ~~Hearing Officer's~~ decision of the Hearing Officer or ALJ; or
3. The Director may remand any matter to the Hearing Office, the Office of Administrative Hearings, or the appropriate section or area of the Department at the request of either party or at the Director's discretion.

I. G. The Director's decision, which sets forth the reasons for the decision, shall be sent by certified mail ~~mailed~~ to the taxpayer ~~petitioner~~, at the taxpayer's last known address, ~~return receipt requested, and forwarded to the Hearing Office and the Department~~.

J. The taxpayer may appeal a Director's decision or a decision that is final pursuant to subsection (A) to the State Board of Tax Appeals or tax court under R15-10-132.

R15-10-132. Appeal of the Final Order of the Department of Revenue to State Board of Tax Appeals, Division Two

A. Within 30 days of the date an order of the Department becomes final, a taxpayer disputing the final order of the Department of Revenue may:

1. File an ~~An~~ appeal ~~may be filed~~ with the State Board of Tax Appeals, ~~Division Two,~~ or
2. Bring an action in tax court, unless the case involves an individual income tax dispute of less than $5,000, ~~by a taxpayer disputing the final order of the Department of Revenue. The appeal shall be submitted as provided by law and rules of the Board.~~

B. If the Director is reviewing the Hearing Officer's or ALJ's decision under R15-10-131 ~~a party to the hearing process has~~

~~requested review by the Director~~, such review by the Director shall be completed before an appeal can be taken to the State Board of Tax Appeals~~, Division Two~~ or an action can be brought in tax court.

ARTICLE 2. ADMINISTRATION

R15-10-201. Closing Agreements Relating to Tax Liability

A. A closing agreement ~~Closing agreements~~ provided for in ~~Section~~ A.R.S. § 42-123 or A.R.S. § 42-139.06 may relate to any taxable period.

1. A closing agreement entered into ~~With respect to~~ for taxable periods ending prior to the date of the agreement~~, the matter agreed upon~~ may relate to the total liability of the taxpayer or ~~it may relate~~ to 1 or more separate items affecting the liability of the taxpayer.
2. A closing agreement entered into ~~With respect to~~ for taxable periods ending subsequent to the date of the agreement~~, the matter agreed upon may~~ shall only relate to 1 or more separate items affecting the liability of the taxpayer.
3. **B.** The Department and the taxpayer may enter into a closing agreement ~~Closing agreements may be executed~~ even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates.
4. There may be a series of closing agreements relating to the liability of a taxpayer for a single taxable period. ~~Any tax or deficiency determined pursuant to a closing agreement shall be assessed and collected and/or any overpayment determined pursuant to a closing agreement shall be credited or refunded in accordance with the applicable provision of the Arizona Revised Statutes, Title 42, Chapter 1, Article 2.~~

B. A closing agreement shall be in writing and shall state the conditions of the agreement.

C. A closing agreement is not effective until it is signed by the taxpayer or an authorized representative of the taxpayer, and by an authorized employee of the Department. ~~The procedure for entering into closing agreements shall be as follows:~~

1. ~~Either the taxpayer or the Department shall prepare a proposed form of the agreement in writing stating conditions of the agreement and the applicable sections of the law under which it has been made.~~
2. ~~Agreements generated by the taxpayer shall be signed by the taxpayer and submitted to the Department in triplicate.~~
3. ~~After an agreement generated by the taxpayer has been received by the Department, it shall be reviewed and if acceptable, signed by an authorized employee of the Department. One of the signed copies shall be returned to the taxpayer. If the terms of an agreement generated by the taxpayer are not acceptable to the Department, the taxpayer shall be notified in writing of the reasons thereof.~~

D. ~~Tax periods subject to a closing agreement shall be reopened when a change or correction in tax liability is made by the Internal Revenue Service or the taxpayer at the federal level. All closing agreements shall provide for such reopening.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATION

PREAMBLE

1. Sections Affected	Rulemaking Action
R18-1-101	Amend
Article 2	Amend
R18-1-201	Repeal
R18-1-201	New Section
R18-1-202	Repeal
R18-1-202	New Section
R18-1-203	Repeal
R18-1-203	New Section
R18-1-204	Repeal
R18-1-204	New Section
R18-1-205	Repeal
R18-1-206	Repeal
R18-1-207	Repeal
R18-1-208	Repeal
R18-1-209	Repeal
R18-1-210	Repeal
R18-1-211	Repeal
R18-1-212	Repeal
R18-1-213	Repeal
R18-1-214	Repeal
R18-1-215	Repeal
R18-1-216	Repeal
R18-1-217	Repeal
R18-1-218	Repeal
R18-1-219	Repeal

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. §§ 41-1003 and 49-104(B)(4)

   Implementing statute: A.R.S. §§ 41-1074 through 41-1076 and 41-1092 through 41-1092.11

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: George Tsiolis or Martha Seaman

   Address: Arizona Department of Environmental Quality
   3033 North Central Avenue
   Phoenix, Arizona 85012

   Telephone: (602) 207-2222

   Fax: (602) 207-2251

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   A. Agency's Reasons for Initiating the Rule

   The purpose of this proposed rulemaking is to conform the Department's rules governing administrative appeals from departmental actions to the new statutory requirements of A.R.S. §§ 41-1092 through 41-1092.11. Those statutory provisions, which govern the appeal of agency actions through Arizona's Office of Administrative Hearings, supersede the Department's current rules at R18-1-101 and R18-1-201 through R18-1-219. This notice proposes to amend R18-1-101, repeal R18-1-201 through R18-1-219, and adopt substitute provisions that relate specifically to issues during appeals from Departmental actions that are not addressed in A.R.S. §§ 41-1092 through 41-1092.11 and Arizona Department of Administration rules promulgated thereunder.

   B. Section-by-Section Explanation of The Proposed Rules

   R18-1-101. Definitions

   This proposed Section deletes the definition of "hearing officer" employed under the current provisions of R18-1-201 through R18-1-219 that are superseded by A.R.S. §§ 41-1092 through 41-1092.11. The definition of "hearing officer" is deleted because that term no longer applies; rather, the terminology currently employed is "administrative law judge," and the jurisdiction to regulate the conduct of an administrative law judge now rests with the Office of Administrative Hearings rather than with the Department.

   R18-1-201. Applicability

   Subsection (A) of this proposed Section provides that R18-1-201 through R18-1-204 apply to a notice of administrative appeal only from a decision made or action taken by the Department. R18-1-201 through R18-1-204 do not govern the operations of the Office of Administrative Hearings (OAH) or other agencies.

   Subsection (B) of this proposed Section provides that the Department will not schedule a hearing with OAH, hold an informal settlement conference, review a decision arrived at through formal adjudication, entertain a motion for a rehearing on a decision arrived at through formal adjudication, or otherwise process a notice of administrative appeal if the notice of appeal concerns an agency decision or action that does not determine the legal rights, duties, or privileges of the party filing the notice of appeal. The Department may apply this subsection only to the 4 types of decisions or actions enumerated.

   First, an investigation, audit, examination, review or other type of information gathering does not determine the legal rights, duties, or privileges of the party from whom the information is being gathered, because such activity is purely investigative and fact-finding. *Hannah v. Larche*, 363 U.S. 420, 440-41 (1960) (holding that a "purely investigative and fact-finding" activity of an agency is not an adjudication of a party's legal rights). It is the subsequent decision to take an action based on the results of the information gathering, rather than the information gathering itself, that may determine the party's legal rights, duties, or privileges. See *Corbin v. Sorich*, 125 Ariz. 331, 333 (Ariz. Ct. App. 1980). Accordingly, the investigation of a person for possible WQARF responsible party liability, for instance, is not administratively appealable as an appealable agency action under A.R.S. § 41-1092(3). Also, the performance of an audit under the Greenfields Pilot Program is not administratively appealable. And the review of a pre-approval application under the UST State Assurance Fund program is not administratively appealable.

   Second, the issuance of a complaint, summons, or similar accusation does not determine the legal rights, duties, or privileges of a party. Rather, the accusation merely initiates the process whereby the rights or duties of the party subsequently may be determined. Accordingly, a complaint, summons, or similar accusation itself is not administratively appealable. This position is consistent with § 4-101(a) of the 1981 Model State Administrative Procedure Act. See § 4-101 comment ("For example, a law enforcement officer may, without first conducting an adjudicative proceeding, issue a 'ticket' that will lead to a proceeding before any agency or court"). This position also is consonant with the Legislature's repeal in Laws 1997, Chapter 287, § 46 of former A.R.S. § 49-297, which had made administratively appealable the Department's refusal to withdraw a responsible party notice. Under the latest WQARF program amendments, the issuance of a responsible party notice is not an appealable agency action. A.R.S. § 49-298.

   Third, the initiation, through the Attorney General, of a formal judicial proceeding does not determine the legal rights, duties, or privileges of a party. Rather, it is the final disposition of the proceeding that determines those rights or duties. Accordingly, the initiation of a formal judicial proceeding is not administratively appealable. This result makes sense because OAH or another administrative agency may not determine the jurisdiction of the Superior Court.

Fourth, notification to a license applicant that the application is deficient or a request that the applicant submit additional application components does not determine the legal rights, duties, or privileges of the applicant, because the applicant has, under R18-1-204, the option to request the Department to reconsider its notification or request. By providing the applicant with the option to request reconsideration and rely on the application components as submitted, R18-1-204 delays the determination of the applicant's rights until the time when the Department ultimately decides, based on the components submitted, to grant, conditionally grant, or deny the license. Accordingly, a notification by the Department that a license application is deficient or a request by the Department that the applicant submit additional components is not administratively appealable.

R18-1-202. Contested Case Procedures

A.R.S. §§ 41-1092.03 and 41-1092.06 impose 4 procedural requirements on an agency. First, the agency must notify a party of its right to administratively appeal an appealable agency action. Second, the agency must schedule a hearing through OAH upon receiving a notice of appeal of an appealable agency action. Third, the agency must notify a party that it may request an informal settlement conference on the appealable agency action if the party is administratively appealing the agency action. Fourth, the agency must convene an informal settlement conference on the appealable agency action if requested to do so by the administrative appellant.

Under A.R.S. § 41-1092.02(D), the above 4 procedural requirements apply only to appealable agency actions and not to contested cases. A contested case is an agency action that is expressly appealable under a statute (other than A.R.S. Title 41, Chapter 6) or a rule. See A.R.S. § 41-1001(5). Therefore, the above 4 procedural requirements do not apply to agency actions that are expressly appealable under a statute or a rule. If the Department does provide notice of the right to appeal a contested case, schedule a hearing on a contested case, or provide a settlement conference on a contested case, the Department does so as a matter of policy or pursuant to the statute or rule that expressly makes the agency action appealable, rather than pursuant to A.R.S. §§ 41-1092.03 and 41-1092.06 which do not apply to contested cases.

This proposed Section goes beyond the requirements of A.R.S. § 41-1092.02(D) by making the above 4 procedures available in all contested cases. The Department has decided to confer these procedural rights in all contested cases for 3 reasons. First, providing these rights also in contested cases avoids any confusion that may result from the operational distinction in A.R.S. § 41-1092.02(D) between appealable agency actions and contested cases. Second, the Department believes the Legislature probably intends these rights to apply to contested cases. Third, providing these rights also in contested cases is good public policy as it allows appellants an additional opportunity to be heard and may result in a settlement that avoids the necessity of a formal hearing.

This proposed Section also covers those instances when filing time limits on notices of contested cases are not specified in A.R.S. Title 49. For example, A.R.S. § 49-142(B) provides that an order to abate an environmental nuisance is appealable "pursuant to Title 41, Chapter 6, Article 10," but fails to specify the time limit in which the party must file the notice of appeal. Moreover, A.R.S. § 41-1092.02(D) does not apply the 30-day filing time limit of A.R.S. § 41-1092.03(B) to such a contested case appeal because that filing time limit applies only to appealable agency actions. This proposed Section corrects this deficiency by imposing the same reasonable 30-day filing time limit also on notices of appeal of contested cases unless A.R.S. Title 49 provides the filing time limit. The Department believes that such a result is not inconsistent with the procedural due process objectives of A.R.S. Title 41, Chapter 6, Article 10, because the Legislature recently has been requiring notices of contested case appeal to be made "pursuant to section 41-1092.03, subsection B" which establishes the 30-day filing time limit for appealable agency actions. For example, Laws 1997, Ch. 287, § 47 (Senate Bill 1452 - WQARF Program Amendments).

This proposed Section, however, does not apply if A.R.S. § 41-1092.01 or § 41-1092.02 exempts the contested case from the provisions of A.R.S. §§ 41-1092.03 through 41-1092.11. For example, the contested case provisions of A.R.S. §§ 41-1092.03 through 41-1092.11 do not apply to "contested cases with... self-supporting regulatory agencies that are supervised by boards or commissions whose members are appointed by the governor." A.R.S. § 41-1092.02(D). The Department is in the process of determining which agencies subject to A.R.S. Title 49 are "self-supporting."

R18-1-203. Record of Administrative Appeal

This provision is relocated from R18-1-219.

R18-1-204. Notice of Intent to Rely on License Application Components as Submitted

Subsection (A) of this proposed Section allows a license applicant to require the Department to reconsider a notice of license application deficiencies or a request to submit additional license application components. The availability of this option means a notice by the Department identifying application deficiencies or requesting additional information in order to process the license application does not determine the legal rights, duties, or privileges of the applicant and thus is not administratively appealable under the definition of appealable agency action at A.R.S. § 41-1092(3).

Subsection (B) of this proposed Section specifies the information the applicant must submit if notifying the Department that it intends to rely on the application components as submitted rather than respond to the Department's request for the additional components. The information specified is the minimum necessary for the Department to understand what requested or identified components the license applicant is electing not to provide and for the Department to determine whether and how it should rescind or modify its request or proceed to a licensing decision.

Subsection (C) of this proposed Section allows the license applicant to submit whatever additional components or other information the applicant believes necessary to support the granting of the license, even though the applicant is electing not to provide additional components requested by the Department.

Subsection (D) of this proposed Section presents the range of actions the Department may take in responding to a notice of intent to rely on the license application components as submitted. This list simply clarifies the choices already permitted by law. The Department may (1) rescind its request for additional components, (2) modify its request for additional components, (3) grant the license unconditionally, (4) grant the license with conditions, or (5) deny the license. Options (4) and (5) would determine the legal rights, duties, or privileges of the applicant, and thus would be administratively appealable under the definition of appealable agency action at A.R.S. § 41-1092(3).

Subsection (E) of this proposed Section specifies that a notice of intent to rely on the license application components as submitted must be made within 2 months unless the Department's notice of application deficiencies or request for additional components states otherwise.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   This proposed rulemaking impacts the potential administrative appellant and the Department. The overall economic impact of this proposed rulemaking is positive.

   By removing the defunct provisions of R18-1-101 and R18-1-201 through R18-1-219 that are in conflict with A.R.S. §§ 41-1092 through 41-1092.11 and corresponding Arizona Department of Administration rules, the Department is eliminating a source of confusion regarding what procedures an administrative appellant must follow. With this source of confusion resolved, the appellant will more likely be able to avoid performing conflicting, duplicative, or otherwise unnecessary tasks during the appeal process. Moreover, harmonizing the Department's rules with A.R.S. §§ 41-1092 through 41-1092.11 helps ensure that the appellant will not inadvertently waive procedural rights under current law, the assertion of which may be necessary to the appellant's economic health or viability. Also, providing the contested case appellant with the option of an informal settlement conference gives the appellant the opportunity to settle the case without having to incur the cost of preparing and presenting the case before an administrative tribunal. Finally, by clarifying what decisions or actions by the Department do not under the law affect the legal rights, duties, or privileges of a party, the proposed rulemaking helps parties to avoid unnecessary expenses associated with filing premature administrative appeals.

   The impact of the proposed rulemaking on the Department, in turn, is minimal. The rulemaking will require the Department to (1) revise form letters that memorialize informal adjudications to include notices of the party's administrative appeal rights under the proposed rules, and (2) upon request convene informal settlement conferences in contested cases in addition to appealable agency actions. Convening informal settlement conferences under the proposed rules in contested cases does not pose significantly increased costs to the Department because the Department already convenes settlement conferences in most of its contested cases, for example, cases involving final payment determinations under the UST State Assurance Fund program.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: George Tsiolis

   Address: Arizona Department of Environmental Quality
   3033 North Central Avenue
   Phoenix, Arizona 85012

   Telephone: (602) 207-2222

   Fax: (602) 207-2251

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

   The public comment period for the proposed rules begins with the date this notice is published in the *Arizona Administrative Register* and ends on Friday, October 10, 1997. Persons interested in submitting written comments on these proposed rules should mail them or fax them to George Tsiolis, identified in Questions 3 and 7 above, no later than 5 p.m. on Friday, October 10, 1997.

   The Department will hold oral proceedings on the proposed rulemaking as follows:

   Date: Friday, October 3, 1997

   Time: 1 p.m.

   Location: Flagstaff City Council Chambers
   211 West Aspen Avenue
   Flagstaff, Arizona

Date:	Monday, October 6, 1997
Time:	1 p.m
Location:	Arizona Department of Environmental Quality Public Meeting Room 3033 North Central Avenue Phoenix, Arizona
Date:	Wednesday, October 8, 1997
Time:	1 p.m.
Location:	State Office Building 400 West Congress Room #158, South Building Tucson, Arizona

The Department is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs special accommodation, please call (602) 207-4795. Persons interested in presenting verbal comments, submitting written comments, or obtaining more information on the proposed rule may do so at the proceedings. The Department will respond to these comments in the notice of final rulemaking.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section
R18-1-101. Definitions

ARTICLE 2. ~~PRACTICE AND PROCEDURE - CONTESTED CASES~~ ADMINISTRATIVE APPEALS CONCERNING DECISIONS AND ACTIONS BY THE DEPARTMENT

Section
R18-1-201. ~~Contested case hearings~~ Applicability
R18-1-202. ~~Initiation of proceedings and notice~~ Contested Case Procedures
R18-1-203. ~~Hearing officer~~ Record of Administrative Appeal
~~R18-1-204. Procedures for motions~~ Notice of Intent to Rely on License Application Components as Submitted
R18-1-205. ~~Motions for more definite statement~~ Repealed
R18-1-206. ~~Service of documents other than subpoenas~~ Repealed
R18-1-207. ~~Filing; formalities~~ Repealed
R18-1-208. ~~Computation of time~~ Repealed
R18-1-209. ~~Appearance and practice before the Department~~ Repealed
R18-1-210. ~~Intervention~~ Repealed
R18-1-211. ~~Conferences~~ Repealed
R18-1-212. ~~Continuances~~ Repealed
R18-1-213. ~~Communications regarding matters related to a contested case~~ Repealed
R18-1-215. ~~Evidence~~ Repealed
R18-1-216. ~~Subpoenas~~ Repealed
R18-1-217. ~~Decisions and orders~~ Repealed
R18-1-218. ~~Rehearing or review of decisions~~ Repealed
R18-1-219. ~~Record~~ Repealed

ARTICLE 1. DEFINITIONS

R18-1-101. Definitions
The definitions in A.R.S. § 41-1001, except for the definition of "person", shall apply to this Chapter. In addition, the terms in this Chapter shall have the following meanings:

1. "Attorney general" means the attorney general of the State of Arizona and includes any assistant attorneys general or other attorneys appointed by the Office of the Attorney General to represent the Department at a contested case.
2. "Department" means the Department of Environmental Quality.
3. "Director" means the Director of the Department of Environmental Quality or the Director's designee.
4. "General public hearing" means a hearing, subject to the requirements of Article 4, held to obtain comment from the public with respect to Department actions. "General public hearing" shall not include oral proceedings, or contested case hearings.
5. ~~"Hearing officer" means an individual appointed by the Director to perform the duties described in R18-1-203 at any contested case hearing.~~
6 5. "Oral proceeding" means a proceeding held during the rule making process, as described by A.R.S. § 41-1023.
7 6. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, state, a political subdivision of this state, or commission or the United States Government or a federal facility, interstate body or other entity.

§ 7. "Presiding officer" means any individual appointed by the Director to perform the duties described in R18-1-304 at any oral proceeding.

ARTICLE 2. ~~PRACTICE AND PROCEDURE - CONTESTED CASES~~ ADMINISTRATIVE APPEALS CONCERNING DECISIONS AND ACTIONS BY THE DEPARTMENT

~~R18-1-201. Contested case hearings~~

~~This Article shall govern contested case hearings held before the Department in all proceedings in which the legal rights, duties or privileges of a person are required by Title 49 of the Arizona Revised Statutes; by Title 41, Chapter 6, Article 6 of the Arizona Revised Statutes; or by rule, to be determined after an opportunity for a hearing. These rules of practice are not applicable to:~~

~~1. Oral proceedings held during rule making as described in Article 3.~~
~~2. General public hearings held pursuant to Article 4.~~
~~3. Hearings before the Air Pollution Control Hearing Board.~~
~~4. Hearings before the Water Quality Appeals Board, pursuant to A.R.S. §49-323.~~
~~5. Hearings before an administrative law judge in the Arizona Department of Administration, pursuant to A.R.S. §49-321.~~
~~6. Personnel matters, or resolution of disputes involving contracts, held before the Department of Administration.~~

R18-1-201. Applicability

A. This Article shall govern administrative appeals filed pursuant to A.R.S. Title 41, Chapter 6, Article 10, concerning decisions made or actions taken by the Department constituting either a contested case as defined in A.R.S. § 41-1001(5) or an appealable agency action as defined in A.R.S. § 41-1092(3)

B. The Department shall not process a notice of administrative appeal in the manner described in A.R.S. §§ 41-1092.03 through 41-1092.06, 41-1092.08, and 41-1092.09 if the decision or action that is the subject of the notice does not determine the legal rights, duties, or privileges of the party filing the notice. The following decisions and actions by the Department do not determine the legal rights, duties, or privileges of a party under A.R.S. § 41-1092(3):
   1. A decision to initiate or not to initiate an investigation, audit, review, examination, or other type of information gathering or the implementation of that decision;
   2. A decision to issue or not to issue a complaint, summons, or similar accusation, or the implementation of that decision;
   3. A decision to initiate or not to initiate, through the Attorney General, a formal judicial proceeding, or the implementation of that decision;
   4. Submission of 1 or both of the following to a license applicant, in accordance with R18-1-204:
      a. Notification that a license application is incomplete or deficient,
      b. Request that the license applicant submit to the Department additional license application components or information.

~~R18-1-202. Initiation of proceedings and notice~~

~~A. A contested case may be initiated only by the Department or by a person whose legal rights, duties, or privileges are required by Title 49 of the Arizona Revised Statutes; by Title 41, Chapter 6, Article 6 of the Arizona Revised Statutes; or by rule, to be determined after an opportunity for a hearing.~~

~~B. A contested case shall be initiated in the manner provided by the statute or rule authorizing the hearing.~~
   ~~1. When a contested case hearing is initiated by a request for hearing served upon the Department, the request for hearing shall specifically cite:~~
      ~~a. The specific actions of the Department which are the basis of the hearing request.~~
      ~~b. The statute or rule requiring the Department to grant that person a hearing.~~
   ~~2. Whenever a contested case hearing is initiated by the Department, a copy of the notice of proceedings shall be served by the Director on the parties named therein. The notice shall be in accordance with the provisions of A.R.S. §41-1061.B. The notice shall be signed by the Director.~~

R18-1-202. Contested Case Procedures

Subject to the provisions of A.R.S. §§ 41-1092.01 and 41-1092.02, the provisions of A.R.S. §§ 41-1092.03 and 41-1092.06 applicable to appealable agency actions shall apply also to contested cases arising under A.R.S. Title 49, unless Title 49 provides otherwise.

~~R18-1-203. Hearing officer~~

~~A. All contested case hearings under this Article shall be presided over by a hearing officer appointed by the Director.~~

~~B. The hearing officer shall have the following qualifications;~~
   ~~1. Be a graduate of a law school provisionally or fully approved by the American Bar Association at the time of the hearing officer's graduation.~~
   ~~2. Be free of any conflict of interest regarding the matter to be considered.~~

~~C. The hearing officer shall have the following duties:~~
   ~~1. Regulate the course of the contested case hearing.~~
   ~~2. Rule upon procedural matters incidental to the contested case hearing.~~
   ~~3. Make findings of fact, conclusions of law and recommendations thereon to be submitted to the Director for decision.~~

~~D. The hearing officer, as well as all parties, may question witnesses.~~

R18-1-203. Record of Administrative Appeal

The Department shall preserve the record of a contested case or appealable agency action for a period of 3 years and, if not made confidential by law, shall make the record available for public inspection upon request.

~~R18-1-204. Procedures for motions~~

~~A. Motions calling for determination of any matter of law shall be filed with the hearing officer in writing. However, such motions may be made orally during a contested case hearing.~~

~~B. In the case of prehearing motions, any party may file a response within 10 days after service of such motion, and shall serve the response upon the moving party.~~

~~C. The moving party shall have 10 days after service of a response to file a reply to that response. These time limits for prehearing motions, responses and replies may be shortened or extended by the hearing officer.~~

~~D. Prehearing motions shall be considered on the written materials submitted by the parties. No oral argument shall be heard on such matters filed prior to the commencement of the contested case hearing unless the hearing officer so directs.~~

~~E. All motions and objections made during the course of the contested case hearing shall be made to the hearing officer who shall rule thereon or take them under advisement for later determination. Objections to the admission or exclusion of evidence shall be made on the record, shall be brief, and shall state the grounds for the objection.~~

R18-1-204. Notice of Intent to Rely on License Application Components as Submitted

A. If a license applicant receives from the Department a notice that the application is lacking application components, is substantively deficient, or is otherwise deficient, the applicant, in lieu of submitting some or all of the components identified by the Department, may submit a written notice of intent to rely on the application components as submitted.

B. A notice of intent to rely on the application components as submitted shall include the following:
1. Identification of the applicant,
2. Identification of the license application,
3. Date of the Department notice or request objected to,
4. Identification of the application component or components objected to with reasons for the objection or objections,
5. A statement that the applicant intends to rely on the application components as submitted as the basis upon which the Department may determine whether to grant or deny the license.

C. A license applicant may submit additional license application components or other information at the same time the applicant submits a notice of intent to rely on the application components as submitted.

D. The Department, upon receipt of a timely notice of intent to rely on the license application components as submitted, shall do 1 of the following:
1. Rescind its request for the application component or components objected to in the notice;
2. Modify its request for the application component or components objected to in the notice;
3. Grant the license unconditionally, meaning that the Department did not add conditions not requested by the applicant;
4. Grant the license with conditions, meaning that the Department added conditions not requested by the applicant;
5. Deny the license.

E. A timely notice of intent to rely on the license application components as submitted is 1 submitted within the time identified on the Department notification or request to which the applicant is objecting or, if the notification or request does not specify a time, within 2 months of receipt of the Department notification or request to which the applicant is objecting.

R18-1-205. ~~Motions for more definite statement~~ Repealed

~~Within 10 days of service of a notice as provided by R18-1-202, any person served with the notice may file a motion with the hearing officer for a more definite statement of the matters stated therein. Such motion shall state the reasons why the notice should be clarified or provide more detail. If the motion is granted by the hearing officer, the order granting such motion shall set the time period in which the more definite statement shall be filed.~~

R18-1-206. ~~Service of documents other than subpoenas~~ Repealed

~~A. Service of documents under these rules, except subpoenas, shall be made by personal service on, or by mail addressed to, the Department, the party, and the party's attorney, if the name and address of the party's attorney has been provided to the Department at the time of the preparation of such documents. Service shall be deemed made at the time of personal service of the document or upon deposit of the document in the United States mails, postage prepaid, in a sealed envelope, and addressed to the person being served, at the last known address of record in the Department.~~

~~B. Proof of service shall be made by filing with the Director a statement in writing that service has been made, stating whether service was made in person or by mail, and signed by the party or the party's attorney. Such statement may be included with the document filed.~~

R18-1-207. ~~Filing; formalities~~ Repealed

~~A. All documents required to be filed in any contested case shall be filed with the Department within the time limit, if any, for such filing; and service thereof shall be made simultaneously on all other parties to the contested case. Filing shall be deemed to have been made when a document is received by the Department.~~

~~B. A docket of all contested cases shall be maintained by the Department and each contested case shall be assigned a number.~~

~~C. The originals of all pleadings shall be filed. All documents filed shall contain the address and telephone number of the filing party or party's attorney.~~

~~D. Except as otherwise provided by this Article, orders shall only be signed by the Director.~~

R18-1-208. ~~Computation of time~~ Repealed

~~A. When a document is served by mail, any limitation on the time in which a response may be made thereto shall be increased by 5 days, or by 7 days for parties residing outside of Arizona state borders.~~

~~B. In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default, after which the designated period of time begins is not to be included. The last day of the period so computed is to be included, unless it is Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.~~

R18-1-209. ~~Appearance and practice before the Department~~ Repealed

~~A. An individual may appear at a contested case hearing in person. A corporation, partnership or other entity may appear through a duly authorized representative. The Department may appear through the Attorney General.~~

~~B. Whether or not participating in person, any party may be advised or represented at the party's own expense by attorney.~~

~~C. When an attorney other than the Attorney General appears before the hearing officer, the names and addresses of the attorney and attorney's client shall be provided to the hearing officer.~~

R18-1-210. ~~Intervention~~ Repealed

~~A. A person seeking to intervene in any contested case shall file a petition for intervention, in accordance with this Section, specifying why the petitioner should be allowed to intervene.~~

~~B. Requirements for petitions for intervention are as follows:~~
~~1. A petition shall be filed with the Department and served upon all parties at least 15 days prior to the hearing.~~
~~2. A petition shall demonstrate that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the contested case.~~
~~3. Any party may file a response to the petition for intervention within 5 days of service of the petition upon the party.~~

~~C. The hearing officer shall consider the following in deciding on the petition:~~
~~1. Whether the proposed petition for intervention is in the interests of justice;~~
~~2. Whether it may unduly delay or prejudice the contested case hearing;~~

3. Whether the applicant's interest is represented by any other party to the contested case.

D. The hearing officer shall decide on the petition for intervention at least 3 days prior to the hearing date, and shall promptly notify the petitioner and all parties of the decision. The hearing officer may continue a contested case hearing or provide for a prehearing conference, or both, if a petition for intervention is filed so that a party may have sufficient time to prepare for the hearing or to file a response to the petition.

R18-1-211. Conferences Repealed

A. Upon a motion by a party or on the initiative of the Director or the hearing officer, the hearing officer may order a prehearing conference. The hearing officer shall give all parties and the Attorney General written notice of any prehearing conference. At a prehearing conference, any actions that will secure the just, speedy and inexpensive determination of the case may be considered, including the following:

1. Formulation, reduction or simplification of the issues;
2. Disposition of preliminary legal issues, including ruling on any prehearing motions;
3. Stipulations to facts and legal conclusions;
4. Stipulations to the admission of certain evidence;
5. Identification of evidence and disposition of any question about the authenticity of that evidence;
6. Identification of witnesses;
7. Resolution of the case without a hearing.

B. During or after a prehearing conference, the hearing officer may issue appropriate orders in accordance with Subsection A. of this Section.

C. The action taken by the hearing officer during or after a prehearing conference shall be made a part of the record and shall control the subsequent course of the proceedings.

R18-1-212. Continuances Repealed

A. The hearing officer may order a continuance or grant a recess.

B. Any party may file a motion for a continuance. For consideration, the motion shall be filed at least 15 days prior to the date set for hearing. The motion shall state the need for the requested postponement.

C. As soon as practicable after receiving a motion for a continuance, an order shall be issued granting or denying the motion and briefly stating the reasons for the order.

R18-1-213. Communications regarding matters related to a contested case Repealed

A. During a contested case, a party or person, directly or indirectly affected by the outcome of a contested case, shall not make or knowingly cause to be made, an oral or written communication regarding any matter related to that contested case, to the Director, the hearing officer, or other Department employee or consultant who is, or may reasonably be expected to be, involved in the decision of the contested case.

B. During a contested case, the Director, the hearing officer, or other Department employee, shall not make or knowingly cause to be made an oral or written communication regarding any matter related to that contested case, to a party or a person who may be directly or indirectly affected by the outcome of the contested case.

C. Any person who receives an oral or written communication prohibited by this Section shall file a notice of the communication with the Department and serve a copy on the hearing officer, the Attorney General and all parties to the contested case. The notice shall include a copy of the communication, if written, or a summary of the communication, if oral.

D. Upon receipt of a notice described in Subsection C., the hearing officer shall give all other parties reasonable opportunity to respond to the communication.

E. This section shall not apply to the following:

1. Communications, including motions, made on the record during the course of the contested case hearing;
2. Communications made in writing, if a copy of the communication is promptly served on the hearing officer, the Attorney General, and all parties to the contested case;
3. Oral communications made after notice of those communications is given to all parties and the Attorney General.

R18-1-215. Evidence Repealed

All witnesses at a contested case hearing shall testify under oath or affirmation. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive relevant, probative and material evidence, rule upon offers of proof, and exclude all evidence the hearing officer has determined to be irrelevant, immaterial or unduly repetitious.

R18-1-216. Subpoenas Repealed

A. Subpoenas shall be issued by the hearing officer to require the attendance and testimony of witnesses and parties, and the production of reports, papers, contracts, books, accounts, documents and testimony or other evidence, which are relevant, material and noncumulative either:

1. At the hearing officer's discretion; or
2. Upon request of a party, as long as the request complies with Subsection C.

B. To be considered, any request for a subpoena shall be in writing, filed at least 10 days prior to the date set for hearing absent, accident or surprise which could not have been prevented by ordinary prudence, and shall clearly identify the person or documents to be subpoenaed.

C. The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for the contested case hearing, a written request to quash or modify such subpoena is filed with the Department. To be considered, the request shall briefly but thoroughly state the reasons therefor.

D. Subpoenas shall be personally served. Service of each subpoena is the responsibility of the party requesting the subpoena.

R18-1-217. Decisions and orders Repealed

A. Within 60 days after the conclusion of a contested case hearing, the Director shall issue a decision in writing and serve a copy of the decision by mail to all parties to the case or their attorneys. Final decisions shall state separately findings of fact and conclusions of law. These shall be based on evidence presented at the contested case hearing and on matters that were officially noticed.

B. Decisions entered by the Director may be released for publication, except where confidential treatment is authorized by the Director.

C. If no rehearing or review is requested or appeal taken within the time provided therefor, the decision shall become final.

R18-1-218. Rehearing or review of decision Repealed

A. Except as provided in Subsection G., any party in a contested case before the Department may file with the Director, not later than 15 days after service of a decision, a written motion for rehearing or review of the decision, specifying the particular grounds therefor. For purposes of this Subsection, a decision shall be deemed to have been served when personally delivered or indicated received by certified mail to the party at the party's last known residence or place of business.

B. A response to a motion for rehearing may be filed by any other party within 10 days after service of such motion upon the party. The Director may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The Director shall decide whether to grant a motion for rehearing or review of a decision within 30 days after the motion is filed.

C. A rehearing or review of a decision may be granted by the Director for any of the following causes affecting the moving party's rights:

1. Irregularity in the conduct of the contested case by the Department or the hearing officer or the prevailing party, or any abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Department or its hearing officer, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original contested case hearing;
5. That the decision is not justified by the evidence or is contrary to law.

D. The Director may affirm or modify the decision or grant a rehearing to any of the parties, and on all or part of the issues, for any of the reasons set forth in Subsection C. After giving the parties or their counsel notice and an opportunity to be heard, the Director may grant a rehearing for a reason not stated in the motion. The order shall specify the grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

E. Not later than 15 days after a decision is issued, the Director may, independently, order a rehearing or review of the decision for any of the reasons set forth in Subsection C. The order granting such a rehearing shall specify the grounds therefor.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits. The period may be extended for an additional period not exceeding 20 days by the Director for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted by the Director.

G. If in a particular decision the Director makes specific findings that the immediate effectiveness of such decision is necessary for the preservation of the public peace, health and safety, and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for rehearing.

R18-1-219. Record Repealed

The record of each contested case proceeding shall contain the information prescribed in A.R.S. §41-1061.E, and shall be located in the Department. The record shall be preserved for a period of 3 years, and, if not confidential by law, shall be made available for examination upon request.